

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

CASCADES BOXBOARD GROUP-  
CONNECTICUT LLC

And

Case Nos. 34-CA-12086  
(formerly 3-CA-26772)  
34-CA-12219

UNITED STEEL WORKERS OF AMERICA  
LOCAL 1840

*Thomas E. Quigley, Esq.,*  
Of Hartford, Connecticut  
For the General Counsel

*Richard F. Vitarelli, Esq., and*  
*Nicole A. Bernabo, Esq.,*  
Of Hartford, Connecticut  
For the Respondent Employer

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Of Griswold, Connecticut  
For the Charging Party Union

DECISION

Statement of the Case

WALLACE H. NATIONS, Administrative Law Judge. This case was tried in Hartford, Connecticut on August 4, 6, 7, 10 and 11, 2009. The charge in Case No. 34-CA-12086 was filed by United Steelworkers of America, Local 1840 (hereinafter Union) on July 17, 2008 and an amended charge in this case was filed by the Union on September 22, 2008. The charge in Case No. 34-CA-12219 was filed by the Union on December 16, 2008 and an amended charge in this case was filed on February 23, 2009.<sup>1</sup> An Order Consolidated Cases, Consolidated Amended Complaint and Notice of Hearing (hereinafter Complaint) was issued by Region 34 on March 31, 2009. The Complaint alleges, inter alia, that Cascades Boxboard Group Connecticut LLC (hereinafter Cascades or Respondent) has engaged in conduct in violation of Section 8(a)(1), (3) and (5) of the National Labor Relations Act (hereinafter Act). In its Answer, Respondent admits the jurisdictional allegations of the Complaint.<sup>2</sup>

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<sup>1</sup> All dates are in 2008 unless otherwise indicated.

<sup>2</sup> Respondent filed motions in this record asking that the case be deferred to the Parties' Grievance-Arbitration process. General Counsel filed his opposition to the Respondent's motions. These pleadings are contained in the Joint Exhibits in the record. I read the Motions and the Responses prior to hearing and entertained oral argument on them at the outset of the

Continued

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent on October 7, 2009, I make the following

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## Findings of Fact

### I. Jurisdiction

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The Respondent, a corporation, with an office and place of business in Versailles, Connecticut, has been engaged in the manufacture of coated paperboard. During the 12 month period ending February 28, 2009, Respondent, in conducting its business operations described above, purchased and received at its facility goods valued in excess of \$50,000 directly from points located outside the State of Connecticut. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Local Union and International Union are labor organizations within the meaning of Section 2(5) of the Act.

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### II. Alleged Unfair Labor Practices

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#### A. The Complaint Allegations

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1. The Complaint alleges that the United Steelworkers of America, Local 1840 (hereinafter the Union or Local Union) and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union – USW (hereinafter the International Union) have been labor organizations within the meaning of Section 2(5) of the Act. At all material times, the International Union and the Union jointly have been parties to successive collective bargaining agreements with Respondent. The most recent agreement, effective by its terms for the period September 10, 2006 until September 10, 2009, provides for the recognition of the International Union and the Union as the exclusive collective bargaining representatives of Respondent's employees in the Unit.

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2. The following employees of Respondent (hereinafter called the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

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All hourly paid employees employed by the Respondent at its facility located in Versailles, Connecticut, excluding salaried employees, office clerical employees, watchmen and guards, professional employees, and supervisors as defined in the Act.

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3. At all material times, the following individuals held the positions set forth opposite their respective names, and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

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Ghislain Levesque	Mill Manager
Michel Poulin	Assistant Mill Manager
Jim Mustin	Technical Advisor

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hearing. It was my belief then and it is still my belief that the purposes of the Act would not be served by deferral and I denied the motions.

Eric Larouche  
Shannon Haddad

Regional Human Resources Manager  
Interim Human Resources Manager<sup>3</sup>

4. At all material times, Jack Luty and Frank Rudewicz, investigators for "UHY Advisors, Inc." have acted as agents of Respondent within the meaning of Section 2(13) of the Act. <sup>4</sup>

5. Since on or about July 11, 2008, Respondent has prohibited employees from wearing T-shirts that communicate an anti-violence message and protest their working conditions.

6. On or about July 11, 2008, Respondent, by Poulin, at its facility, threatened employees with discharge if they did not remove the T-shirts described about in paragraph 5.

7. On or about December 3, 2008, Respondent, by Haddad, interrogated employees regarding their union activities.

8. On or about January 5, 2009, Respondent, by Luty, at its facility, interrogated employees regarding their union activities.

9. On or about November 30, 2008, employee Abdellatif El berchoui, a Union steward, engaged in union and concerted activities with other employees for the purposes of collective bargaining by investigating pending grievances.

10. On or about December 12, 2008, Respondent suspended its employee Abdellatif El berchoui.

11. Respondent engaged in the conduct described above in paragraph 10 because El berchoui engaged in the activities described above in paragraph 9.

12. Respondent engaged in the conduct described in paragraphs 6 and 10 because El berchoui and other employees supported and assisted the Union, and to discourage employees from engaging in these activities.

13. The subject set forth in paragraph 5 above is a mandatory subject of bargaining and

<sup>3</sup> In its Answer, Respondent admits that Levesque, Poulin, Mustin and Larouche are supervisors and have been supervisors at all material times. It admits that Haddad has been a supervisor since September 2, 2008. It denies the remaining allegations of this paragraph.

<sup>4</sup> At hearing Respondent continued to deny the agency status of Luty and Rudewicz, however, the General Counsel and Respondent entered into a stipulation related to this matter. It reads:

1. Respondent has utilized the services of UHY Advisors, Inc. ("UHY") since about July 2007, in order to conduct several investigations into suspected employee misconduct at Respondent's facility in Versailles, CT.

2. Respondent has relied in some cases upon the results of UHY investigations in basing decisions to discipline employees under investigation.

3. UHY received compensation for services provided to Respondent.

4. Respondent utilized the services of UHY in December 2008 and January 2009 concerning suspected misconduct by employee Abdellatif El berchoui.

5. Respondent relied, in part, upon the investigatory reports and witness statements compiled by UHY in basing the decision to suspend Mr. El berchoui for 3 months by letter dated January 19, 2009.

Respondent engaged in the conduct described in paragraph 5 without affording the Union notice and an opportunity to bargain with Respondent with respect to such conduct.

5        14. The conduct set out in the above paragraphs of this section is in violation of Section 8(a)(1), (3) and (5) of the Act.

B. Did Respondent's Actions Relative to the "No Violence" T-shirts Violate the Act?

10                    1. Facts Related to the Ban of the "No Violence T-shirt.

Cascades Boxboard Group operates a number of mills in Canada and the United States, including one located in Versailles, Connecticut. The Versailles mill makes cardboard from recycled material. This mill has been in existence under different owners for many years.  
15        Cascades acquired it in 2006 and changed its management. The mill has been unionized for at least much of its existence. The evidence reflects that prior to Cascades acquisition of the mill, labor relations had been stable, but that changed with the arrival of new management. The number of grievance filings went up and the Union began filing ULP charges with the Board for the first time.

20                    Michael Marshall is employed by Cascades as a "Fourth Hand" in the production department. He described his work place as a factory with a very high noise level requiring the use of ear plugs by employees on the plant floor. There are approximately 100 to 105 employees at the plant. The Respondent's operation at the Versailles facility is 24 hours, seven  
25        days a week. Marshall's position puts him at the last station in the production process, just before the shipping section takes over and ships the finished product. Marshall was injured on July 17, 2008 and was out of work for about ten months, coming back to work in June 2009 in a light duty position. Marshall's direct supervisor is named Barry Benson. Benson reports to either Mill Manager Ghislain Levesque or Assistant Mill Manager Michel Poulin. Marshall testified that  
30        Jim Mustin is a Technical Advisor who occasionally supervises machine workers on the first shift. Mustin is a long time employee in the mill who rose through the ranks to management about six months or so before the events at issue here occurred. He had been a member of the Union and at one time was its President.

35                    Marshall is a member of the Local Union and is a shop steward for the Local Union. At about the time of his injury, Marshall was also working with the Communication Action Team (CAT) which is a Union team that tries to dispel rumors on the plant floor and get truthful information from the Union's leadership to the members. The Union's leadership is comprised of its Executive Board which includes the Union's President Richard Harrelle, Vice President Rick  
40        Geer, Treasurer Michael Fountain, Recording Secretary Scott Williams and Chief Steward Abdellatif El berchoui.<sup>5</sup> El berchoui is nicknamed Abdou and that name is what he is universally referred to by other employees and is the name used in various documents introduced in the record. El berchoui expressly stated that he was comfortable with this name and he will be referred to as Abdou throughout this decision. In addition to Abdou, there are six or seven other  
45        Union stewards at the plant, including as noted above, Marshall.

To the extent that the Respondent has a dress code for the paper mill, it is contained in its Basic Safety Rules which are a part of Respondent's Policy and Procedure Manual. As

50        <sup>5</sup> El berchoui is spelled various ways in documents in this record. The spelling I use is the one in the transcript given by El berchoui to the court reporter.

pertinent, the Safety rules specify that: a) eye protection, with fixed side shields, shall be worn by all individuals, at all times; b) steel toe foot protection (ANZI Z41 approved) shall be worn by all individuals engaged in work on Cascades Boxboard, Versailles premises; c) hearing protection is mandatory at all times, throughout the mill, power house and pumping stations; d) shirts with minimum 4" sleeves are required at all times; and e) trousers extending to the ankles are required (shorts or cut-offs are not allowed).

Marshall testified that in his regular production job, he usually wore to work jeans, t-shirts and sometimes a sweater or coat if it was cold. He testified that the Respondent supplies uniforms to employees who want them. Marshall has some company uniforms, but usually wears only the pants as he considers the shirts to be too heavy. He testified that at least as of July 2008, no employees were required to wear the uniforms. Since that date, some maintenance and electrical employees are required to wear all or a part of the company uniform for safety reasons.

Marshall testified that the t-shirts he wore to work displayed sports logos or local business logos. He testified that the work at the plant was very dirty work and he usually wore a damaged t-shirt that he would not wear otherwise.

Marshall testified that groups of visitors sometimes are taken through the plant. He estimated that in the six months preceding July 2008 that did not happen regularly. He testified that groups of visitors would be led by management and would consist of from two visitors to seven or eight in a group. Marshall testified that if a group approached a working employee, that employee would engage in conversation with the group if asked. But employees do not approach visitors on their own. Prior notice of a group visit is given to employees so they can clean and make the plant as presentable as possible. He testified that days and even weeks advance notice is given. With respect to the first two weeks of July 2008, Marshall could not remember any advance notice being given of a group coming through the plant.<sup>6</sup>

In July, 2008, Marshall, in his position as steward, became aware of an incident involving Supervisor Mustin and a rank and file employee Steve Zottarelli at the plant. On July 2, Marshall was approached by several co-workers who told him that Mustin had yelled at, intimidated and shoved a fellow employee. According to Marshall, the Respondent maintains rules prohibiting physical contact and intimidation between employees. Marshall testified that in the past, participants in similar incidents were suspended from their jobs until an investigation could be conducted and a decision made as to what discipline, if any, to take.

Marshall testified that upon learning of the incident he began investigating it to determine the truth about what happened. Marshall later reported his findings to Abdou and to the Executive Board. Marshall filed a grievance over the matter on July 7. The grievance complained that a member of management engaged in an altercation with a bargaining unit member which included threatening and intimidating. The remedy Marshall requested was for Respondent to "follow any and all policies, procedures and rules pertaining to threatening, intimidating and any other form of workplace violence." At the first step in the grievance procedure, occurring on July 7, management answered that the grievance was premature as it did not know the outcome of the investigation. At the second step, dated July 14, management answered that the investigation was completed on July 10, 2008. Management concluded that inappropriate words were used in the exchange between the individuals. It stated that the

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<sup>6</sup> Other evidence established that at least one group visit occurred in July 2008 and that one took place on July 18.

company does not tolerate such conduct, noting that appropriate actions had been taken to prevent this from happening again. However no information about what action had been taken was given to the Union.

5 Marshall testified that the Company's handling of the Mustin incident was contrary to past practice. He testified that ordinarily, the Company suspends the participants to an altercation, both management and rank and file participants, until an investigation has been conducted. After the investigation, depending on what is found, the involved employees are brought back, or disciplined in some fashion. In Mustin's case, he was not suspended pending  
10 an investigation and remained at work. Marshall testified that this inaction caused tension on the plant floor.

When Marshall presented the grievance at the first step to then Versailles Human Resources Manager Eric Larouche, he was of the understanding that Mustin had touched the  
15 employee and pushed him, together with swearing at, yelling at and intimidating that employee. Marshall testified that Mustin also invited the employee out of the plant to fight. No fight took place however.

In addition to the grievance, the Union decided to protest Mustin's actions and  
20 Respondent's response to those actions by making up t-shirts objecting to workplace violence. The t-shirt they designed was a solid red one with international sign for the word "no" (the so-called Ghostbuster sign) over the word "violence". Marshall testified that these t-shirts began to be worn in the plant by some employees beginning on July 8 or 9. Marshall wore the t-shirt at work on July 11. Upon arrival at the plant that day, he was given the protest t-shirt and put it on.  
25 He then went to his work station and was being briefed by the employee he was relieving. That employee, Kurt Farmer, was also wearing the protest t-shirt.<sup>7</sup> The two men were then approached by Assistant Mill Manager Michel Poulin. According to Marshall, Poulin asked him to remove the t-shirt. Marshall responded by asking Poulin if that was a direct order. Poulin responded, "Yes, you need to take off the t-shirt. I'm trying to be polite." Marshall then said, "All  
30 right, would there be any consequences if I don't take off the t-shirt?" Poulin replied, "Terminated." Marshall then took off the t-shirt. His fellow employee, Kurt Farmer did likewise. According to Marshall, Poulin gave no reason for his directive. Marshall did not again wear the t-shirt at work as he feared being fired if he did so. Following this incident, Marshall told other employees of Poulin's threat and no one else wore the shirt at work.

35 The Union's Communication Action Team then posted for and passed out to members the following notice:

"C.A.T. Team Alert! On Wednesday July 2, 2008, a member of the management team  
40 engaged in an altercation with a bargaining unit member. As of today, July 14, 2008 the company has not disclosed their determination on the discipline measures for the supervisor.

Also the company has not allowed the members to wear t-shirts on the shop floor that support the rights of the workers to have a violence free workplace. Workers wearing these shirts were threatened with termination if they did not remove them.

45 Employers have both a legal and moral obligation to provide a safe workplace. The employer is aware of the threat and intimidation that took place on July 2, 2008 but the system

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<sup>7</sup> Farmer did not testify and Marshall said that Farmer was seriously injured in a car accident and was still injured at the time of hearing. Chief Union Steward El berchoui testified that as of  
50 the date of hearing in this case, Farmer had been terminated by Respondent. The parties stipulated that the date of his termination was October 29, 2008.

that is in place seems to be stalling.”

The notice above was prepared by Abdou.

5 It is not disputed that if visitors to the facility went on the production floor, they could have seen the protest t-shirts if they were being worn by employees. Visitors to the plant include contractors employed by the company, company customers and occasionally politicians. Respondent introduced as R. Ex. 1 a management notice to employees. The notice is not dated, but thanks the employees for their cooperation in connection with a visit to the plant of  
10 Norampac Corporate personnel and some political officials on July 18, 2008.<sup>8</sup> Marshall was unaware of how many employees wore the t-shirt before the date of Poulin’s threat. He thought perhaps a few wore them, but could not give a number. Marshall vaguely remembered an incident when an employee was asked to remove a t-shirt or something affixed to a shirt because it was offensive. Marshall testified that offensive t-shirts or insignia were not allowed.  
15 Union insignia or Union t-shirts were allowed to be worn at work.

Union Chief Steward Abdellatif El berchoui also testified about the “no violence” t-shirt issues. El berchoui or Abdou has been employed by Respondent for nine years and is currently a “Back Tender” in charge of part of the production process. Abdou, like other production  
20 employees, works a rotating shift and is supervised by different supervisors depending on what shift he is working. The rotating shift requires employees, such as Abdou, to work on all three shifts at some point in a specified period of time.

El berchoui testified that visitors to the plant floor come with varying frequency ranging from once a month to once every six months. He testified that the visitors sometimes interact with employees, but rarely. He has talked with such visitors only twice in the nine years he has worked at the Company. He, like Marshall, testified that advance notice is given of these tours by visitors. He testified that employees get one or two days notice, just enough to clean the facility for the visit. He testified that he did not remember getting advance notice of any tour in  
30 July 2008.

He testified that employees are offered uniforms by the Company, but aside from the 27 person Maintenance crew, employees are not required to wear them. Other than Maintenance employees, Abdou estimated about 40 or 50 percent of the employees wear all or part of the uniform at work. Abdou himself wears his own jeans and shirts to work. Many of the employees wear t-shirts that have on the logos for sports teams, NASCAR, musical bands, hunting insignia and other types of logos. Abdou usually wears a shirt with the Union’s logo on it.  
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In July, 2008, Abdou became aware of the Mustin incident. He was involved with the filing of the grievance over the incident. He was a participant in the decision to make the “no violence” t-shirts and felt the shirts would send the message that the Union did not condone workplace violence and that it expected the company to do the same. The Union made about 15 of the protest t-shirts. At the time they were made up, Abdou was working third shift and wore the t-shirt to work two or three days after the grievance was filed by Marshall. At about 5:30 am, he was observed wearing the shirt by Human Resources manager Eric Larouche. About 8 am  
45 that same day, he and Union President Richard Harrelle met with Larouche in the Company’s conference room. The meeting’s topic was about health insurance. At this meeting the topic of the t-shirt that Abdou was wearing came up. Larouche asked that Abdou remove the shirt and

50 <sup>8</sup> Mill Manager Levesque testified later and stated that he prepared this notice and that it was posted on July 18 after the group had left the mill.

told him that other employees wearing the shirt should not wear them at work. Abdou testified that he told Larouche to give him a direct order to remove it and he would. According to Abdou, Larouche stated: "I can't. It's against the law for me to react." Abdou then asked Larouche that "if it is against the law, why are we having this conversation?" The meeting ended without  
 5 Larouche giving a reason for wanting Abdou to remove the shirt.<sup>9</sup> On this day, Abdou estimated four employees on the third shift were wearing the no violence t-shirt. He identified these employees as himself, Chris Morris, Gerard Williams and Rick Bernard.

10 Abdou testified that he would not have worn the t-shirt on days visitors were coming through the plant. He testified that it was not his or the Union's purpose to do the Company any harm. He did not think the t-shirt would create problems with visitors, but would not have worn it on days they were in the plant. Abdou gave as an example of an inappropriate t-shirt one that depicts someone giving the "finger". An employee wore such a t-shirt to work and Abdou had him wear it inside out. Another example cited by Abdou was a shirt with a picture of a rat and  
 15 the circle and line meaning "no" symbol over it. Management instructed the employee to remove and he did. Abdou himself wore a hat with a rat insignia and was asked about it by management. He was not asked to remove it, but never wore it again to work.

20 Christopher Morris has been employed by Cascades for about eleven years and currently is employed as a winder operator and machine operator. He testified that group tours come through the mill a few times a year. He testified that the workers do not usually interact with the visitors, though he imagined it has happened. Morris testified that advance notice of the tours is given workers so that they have time to clean and make the mill presentable. At work, he usually wears the Company uniform pants with one of his own shirts. He usually wears shirts  
 25 that are so worn he would not wear them out anywhere else. He testified that his t-shirts all have some logo on them as do the shirts worn by other employees. As was the case with Marshall, he testified that the logos are mostly concert bands or sports team logos. He has seen employees be asked by management to turn their shirts inside out because the saying on their shirt was vulgar or contained a swear word.

30 In July 2008, he became aware of the Mustin incident. He heard from other employees that Mustin had pushed an employee. Morris testified that such behavior is ordinarily grounds for discipline. When the no violence t-shirts were handed out, Morris was given one. He wore it one time on the third shift from midnight to 8am. On this occasion he believes a supervisor saw him wearing it, but did not say anything about it. He wore the shirt because he felt that the  
 35 employees were sticking together and standing up protesting the failure of the Company to discipline a supervisor who committed workplace violence. When he came to work the next day after wearing the t-shirt, he learned that an employee had been threatened with termination for wearing the shirt. He testified he did not want that kind of trouble.

40 Frank Santarcangelo has been employed by Cascades or its predecessor for twenty years. He is currently employed as a utility person. He testified that visitors come to the plant floor with a frequency of about once a month. These tours usually are accompanied by management and consist of from one to a dozen visitors. He testified the employees do not  
 45 typically interact with the visitors. Usually two or three days advance notice is given of upcoming

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50 <sup>9</sup> Larouche denied that this meeting took place. Instead he mentioned a meeting with Kurt Farmer about the T-shirts and yet another with Richard Harrelle. Both Harrelle and Abdou gave consistent credible testimony in this proceeding whereas Larouche often seemed to stretch the truth. I credit Abdou's testimony in this and all other regards and find that the meeting did take place as described by Abdou.



visitors' tours. Notice is given so that the employees have time to clean up the plant.

He testified that for all but maintenance employees, wearing a Company uniform is optional. Santarcangelo himself usually wears a uniform, but that is his choice. He testified that other employees often wear t-shirts containing logos of destinations like Disneyland, rock bands or motorcycle makes. Unlike the other witnesses on this point, he has not observed employees being asked to turn their shirts inside out because of what was depicted on their shirts.

Richard Harrelle is employed by Cascades as an engineer in the Company's power plant and is also the Union's President. He has been employed by Cascades and its predecessors for 23 years. He characterized the status of labor relations in the mill as being poor for the last three years. He testified that the grievance filing as being symbolic of the bad relations, with the number of filing up significantly since Cascades acquired the mill.

Harrelle learned of the Mustin incident the day after it happened. Abdou was the person who reported it to him. Harrelle testified that the Union grieved the incident through the second step, then had to drop it as it could not continue the grievance as Mustin is a salaried employee. Both Harrelle's International Union Representative and Respondent's HR Manager Larouche told him that was the situation. Because the Union could not arbitrate the incident, Abdou came up with the idea for a t-shirt to make a statement about the incident. That statement was that the Union does not condone violence in the workplace. The violence that was involved was that exhibited by Mustin against a rank and file employee in the mill.

Harrelle testified that he and Abdou met with Larouche on July 9, 2008 to discuss an insurance issue. Abdou wore the "no violence" t-shirt that day and was wearing it in the meeting. Larouche inquired why Abdou was wearing the shirt. Harrelle explained that the Union was making the statement, again, that it does not condone violence in the workplace. At this point, Abdou asked if Larouche wanted him to take off the shirt and, according to Harrelle, Larouche said: "I cannot ask you to take it off, it would be illegal". Months after the July 11 incident when Marshall was threatened with discharge if he did not remove the shirt, Harrelle met with Larouche again about the shirt. Larouche told Harrelle that they should bargain over a dress code. Harrelle told him that it was too late. Harrelle testified that the Company has a dress code describing it as shirts must have sleeves, no shorts, eye glasses, safety shoes, and voluntary uniforms. There is nothing in the contract that specifically addresses the issue of a dress code other than the items noted. Harrelle declined to bargain as the Union had already filed an ULP charge over the threat two months earlier.

Eric Larouche is currently Director of Human Resources for Norampac and Cascades Boxboard Group for the United States and has ten mills under his jurisdiction. He has been in this position since September 2, of 2008. Prior to this date, he was Director or Manager of Human Resources for Cascades' Versailles mill and had held that position since January 12, 2007. He had been employed by Cascades in a similar position at another mill since 2002. He testified that the Company has rules governing employee behavior that are the same for both bargaining unit employees and all other employees, including supervisors and other management.

With respect to the t-shirt issue, Larouche mentioned two previous t-shirts that management found offensive and asked the employees wearing them to remove them which they did. These both involved wearing a shirt with a rat depicted with the universal "no" sign over it. The employees involved were Santarcangelo and Abdou.

Larouche was aware of the July 2 incident involving Mustin and Unit member Steve

Zottarelli. On that date Mustin was acting in the capacity of supervisor as the regular supervisor was away. Mustin asked Zottarelli to do something and Zottarelli did not do it. According to Larouche, Mustin blew a whistle and screamed and yelled at Zottarelli. According to Larouche, Mustin shortly thereafter came to his office apologizing for his behavior, for his yelling and screaming and for the language he had used. Larouche directed him to apologize to Zottarelli. At this point, Larouche did not have the details of what actually happened during the confrontation between Mustin and Zottarelli. The Union filed a grievance over it the same day and Larouche investigated. After investigation, Larouche and other management decided what Mustin had said and done was totally unacceptable and against Company rules. The investigation determined that Mustin used inappropriate words to express himself, was rude, and invited Zottarelli outside to the parking lot to physically fight. They then suspended Mustin for three weeks and sent him to anger management therapy.

The Union, by its grievance and otherwise, inquired as to the scope of what discipline, if any, was given to Mustin. The Company refused to provide this information. The grievance filed by the Union was taken to a third step.<sup>10</sup> At that step, Larouche admitted that what Mustin had done was not being tolerated by management, but the scope and substance of its response to Mustin's actions was private and would not be disclosed.

Larouche was aware that the "no violence" t-shirts were in protest of the Mustin – Zottarelli incident. Prior to this incident, there had been another incident in April 2008 involving an altercation between an employee named Cilley and another bargaining unit member. Cilley had been suspended over the incident, which was captured on video and which showed Cilley physically assaulting the other employee. Part of the reason for the protest of the Mustin incident was the Union's feeling that Mustin was not being disciplined for the same thing that a bargaining unit member was suspended for.

At some point in July, Larouche became aware that some employees were wearing the "no violence" t-shirt. He first learned of the t-shirt over a weekend from supervisor Mustin. As there were no tours scheduled for that weekend, Larouche testified that he would take care of the matter on the following Monday. According to Larouche, on Monday, July 7, he saw unit member Kurt Farmer wearing the t-shirt and called him into his office. Farmer came in at the end of his shift with Union representation. According to Larouche, Michel Poulin was also present for this meeting. Management gave Farmer three options, turn the shirt inside out, remove it and wear a shirt provided by management, or go home and change shirts and return to work. Farmer turned the shirt inside out.

Larouche denied having a meeting about insurance coverage with Harrelle and Abdou at a time when Abdou was wearing the "no violence" t-shirt. He has checked his appointments calendar and there were no meetings scheduled about insurance for the week of July 7. On the other hand, the calendar does not reflect any meetings with Mustin or Farmer during this time frame though Larouche testified they took place. Larouche also denied ever seeing Abdou wear the no violence t-shirt.

I credit the testimony of Harrelle and Abdou with respect to the meeting they credibly testified took place and described. I do not credit Larouche's denial that it took place and I find

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<sup>10</sup> There is a minor conflict in the testimony of Larouche and Harrelle as to whether the grievance went to the third step. I do not think it matters as what Larouche said happened at the third step is consistent with what the Union witnesses testified relating to Respondent's response to their grievance.

that it did take place as described by Harrelle and Abdou. Farmer did not testify. Poulin did testify and did not mention the alleged meeting with Farmer nor any other meeting he attended where the subject of the t-shirts was involved, save for his phone call to Larouche on the date he threatened Farmer and Marshall. For reasons discussed further with respect to the evidence adduced with respect to the suspension of Abdou, I did not find Larouche credible on several key points.

Michel Poulin is Production Manager at Cascades Versailles plant. Poulin gave his version of the encounter with Marshall wearing the t-shirt. He testified that he was in the mill at 7am on July 11, when he observed two employees wearing the t-shirt near the winder machine. At hearing, he could not remember their names. Poulin went to his office and called Larouche. He told Larouche that he had seen two employees wearing a red t-shirt with the word "violence" on it. According to Poulin, Larouche told him to have the employees remove the t-shirt. According to Poulin, Larouche told him to tell the employees if they refuse to remove the shirt, that they might get a discipline notice for their refusal. Poulin testified that he went to the two employees, who had been joined by a Union representative, Mike Marshall. Poulin testified that he asked the two men to remove the t-shirt. Marshall then asked Poulin what would happen if they would not agree to take off the t-shirts. Poulin said in that event, he would be obliged to give them a discipline notice. Poulin testified that the offense would have been insubordination. The employees then removed the offending shirts. According to Poulin, Marshall was not wearing the t-shirt.

Poulin testified that the wearing of the t-shirts on this day bothered him as there were going to be important visitors at the mill over the next two weeks. He did not tell the employees that when he told them to remove the shirts. Poulin understood that the shirts meant no violence.

I credit Marshall's account of the threatening incident. His testimony is consistent and forthright, whereas Poulin's was not. Moreover a reading of his testimony will reflect that Poulin was not on script as he did not answer his counsel's questions in the manner obviously desired by counsel. Marshall's version is also supported by the fact that the Union's Communication Action Team posted a notice shortly after the incident complaining of the threatened terminations. There was no counter-posting by Respondent denying the allegation or offering any explanation of what happened that would call into question the factual accuracy of the CAT notice. Even Poulin's account of the event is similar in that he admitted that he threatened discipline and did not tell the employees why he was demanding they remove the t-shirts.

Larouche testified further on this issue. He testified that on July 9, he was at the Company's headquarters near Montreal, Canada, when he received a call from Poulin about 7am. Poulin asked what he should do if he found an employee wearing the no violence t-shirt and that employee refused all three options given to Farmer. It appears that Poulin had had this happen. Larouche told him that the employee could be considered to have been insubordinate and subject to discipline depending on the context. He asked Poulin whether he had explained to the employee about vendors and asked if he had argued with the employee. Larouche noted that one customer comes into the plant on short notice and further that about this time, the Company was planning a tour of the mill with local politicians. Larouche's memory of this call conflicts with that of Poulin which is given above and I do not credit this testimony. I do not question that the call took place, or that Larouche was in Canada when it took place, but the versions are so different, that I credit neither except to note what Poulin testified he was told to

do by Larouche is what happened.<sup>11</sup>

Larouche testified that later that week, upon his return to the Versailles mill, Larouche had a conversation with Union President Richard Harrelle because Harrelle was upset about the Company's handling of the t-shirt issue. According to Larouche, Harrelle told him that he was going to wear the "no violence t-shirt" to work the next day. Larouche testified that he asked Harrelle to lead by example and not wear the shirt. He testified that he pointed out that an important customer had come to the plant the previous week with only 12 hours advance notice. Larouche testified that the Company cannot afford to have visitors see employees wearing the t-shirt as they will think that the mill was an unsafe or violent workplace. He added that the Company does not condone violence. His statements evidently did not convince Harrelle. So Larouche asked Mill Manager Ghislain Levesque to go to the power house where Harrelle worked and talk with him about the t-shirt issue. Larouche was on vacation for the next few days, but learned that Harrelle did not wear one.

Larouche explained the Company's position with respect to the "no violence" t-shirt. He testified that the Company was losing about a million dollars a month and was in discussions with its Board of Directors about spending \$125 million to reduce energy costs per ton at the mill. Seeking federal and state funding for a portion of this cost, the Company had invited some local state and federal officials and elected representatives to come for a visit and tour of the mill in the second week of July. Between that tour and the visits on short notice by customers, the Company feared what reaction the outsiders would have not knowing the context in which the t-shirt was being worn. Larouche testified that there would be no time when the wearing of the no violence t-shirt at work would be appropriate or tolerated. To the best of Larouche's knowledge, no one wore the "no violence" t-shirt after July 11.

Larouche testified that he tried to convince the Union that the Company did not condone violence, but that the Union was upset because the Company would not disclose the outcome of the Mustin discipline. He testified that the Union never grieved or requested bargaining over the wearing of the t-shirt. Larouche testified that a Company investigation failed to reveal the name of the management official who allegedly threatened Marshall with termination. It was only after an amended ULP charge was filed that it learned the supervisor was Poulin. I would note that I find this testimony to be totally incredible. The only incident when an employee was directed to remove the "no violence" t-shirt involved Poulin and Larouche himself testified as to a phone call from Poulin asking for directions in the event an employee refused to remove the t-shirt upon being requested to do so. Larouche testified that no employee has ever been disciplined at the Versailles mill for refusing to remove a t-shirt.

As noted above, Larouche testified that he did not learn that Poulin was being accused of threatening an employee with termination until much later. Larouche believes that no one was threatened with termination because management had come up with its three options for dealing with the t-shirt. The record reflects that the Union posted its CAT Alert in the mill shortly after the Mustin incident and notes that employees were threatened with termination if they continued to wear the no violence t-shirts. Larouche did nothing at the time to deny these allegations and make that denial known to the Union. I believe the three options approach to the t-shirts, if it actually existed at the time, was never explained to Poulin before he threatened Marshall and Farmer with termination. Given the general lack of credibility of Larouche, I even

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<sup>11</sup> Respondent went to great lengths to prove that Larouche was indeed in Canada on this date. I do not know why it did so as no one to my knowledge raised any question about his whereabouts.

doubt that the three option approach existed at the time of the July 11 incident and believe it came into existence in preparation for this proceeding.

5 Ghislain Levesque is the General or Mill Manager at the Versailles mill. He has held that position since July of 2007. Levesque testified as to the financial condition of the Mill. He testified that in the early summer of 2008, Cascades had four divisions of which the Versailles mill was part of the boxboard division. That division merged with another company, Norampac, in March 2008. The future of the Versailles facility was in doubt as it was losing a lot of money. 10 The mill was engaged in a large project to save on energy costs, which were very significant in the 2008. Part of the project was getting state and federal assistance in paying for improvements which would lower energy costs. The Company had invited a group of local state and federal elected and agency officials to the plant to sell them on helping. He met with Union officials in May 2008 to let them know the Company's efforts to get grants to make the energy improvements. One of the efforts was to secure a grant from the Connecticut Clean Energy 15 Fund. It was in the furtherance of this effort that a tour of plant by local, state, and federal officials was held. The efforts to get this grant failed however.

20 The tour that included the politicians was held on July 18. The Company's officials and its lobbyist explained to the elected officials the Company's financial predicament and its plans to resolve the energy issues. The Company informed employees in advance so that the plant could be made as presentable as possible. The tour was conducted and after it ended, Levesque had posted for employees a notice from him thanking the employees for their efforts with respect to this tour.

25 Levesque was notified about the "no violence" t-shirts by Human Resources. He personally never saw an employee wearing one of the shirts at the mill. The first time he actually saw one of the shirts was at the hearing in this case on the day he testified. He was advised by HR that a few employees were wearing the shirt, mostly around the part of the mill that is a heavy traffic area for visitors and suppliers. Levesque, though never having seen the shirt, 30 considered it totally unacceptable. He was surprised employees were wearing the shirt and did not understand why they were wearing it. He asked his management team to tell employees wearing the shirt to turn them inside out, remove them and wear a company supplied shirt or go home and change it. He did not want the shirts worn in the mill on any shift. As with similar testimony by Larouche, I have great difficulty in believing it.

35 It was his opinion that the shirts could send a message to visitors that employees were violent against one another, or that the company was violent against employees. He considered it crucial in this time frame for the shirts not to become a big issue. At some point he learned that the shirts were in protest of the Company's handling of the Mustin incident. According to 40 Levesque, the Union was informed that the Company did not tolerate violence and that it did not approve of Mustin's actions. The Union was not, however, told of what the Company did to Mustin because of the incident.

45 Levesque testified he learned that Michel Poulin was accused of threatening an employee with termination if the employee refused to remove the shirt only after this case was filed. Levesque was at the mill on July 11 and did not receive any reports of employees wearing the shirts. He was in Montreal at a corporate meeting on July 9. Levesque testified that Poulin was aware of the Company's three option approach to the no violence t-shirts and was not aware of what he told the employees wearing the t-shirts when he asked them to remove them. 50 I would note again parenthetically that if Poulin was indeed aware of this so called three option procedure, he did not evidence any knowledge of it and clearly did not follow it in his confrontation with Marshall and Farmer.

Levesque recalled three t-shirts in the past which had offended management. Two of them were the ones depicting rats and the third was a t-shirt with an obscene word displayed. In all three instances, the employees wearing the shirts turned them inside out or removed them upon being asked. The Company has not objected to employees wearing shirts with their Union logo displayed on them.

## 2. Conclusions With Respect to the Legality of Respondent's Ban on Employees Wearing the "No Violence" T-shirts.

### a. The Applicable Case Law

Any analysis of clothing or insignia cases starts with the general proposition that employees have a protected right under Section 7 of the Act to make known their concerns and grievances pertaining to the employment relationship, including the right to wear union insignia at work. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945). These rights can give way, however, where the conduct or the message displayed is vulgar or obscene (see *Leiser Construction, LLC.*, 349 NLRB 413 (2007)(rat sticker on hard hat)), or inflammatory and offensive (see *Komatsu America Corp.*, 342 NLRB 649 650 (2004) (t-shirt reference to Pearl Harbor at Japanese company held unprotected)).

The Board has also upheld bans of union insignia when the message on the shirt is so "offensive, obscene or obnoxious" as to flunk what seems to the Board's "smell" test. See *Southwestern Bell Telephone Co.*, 200 NLRB 667, 700 (1972). In that case the Board found that the t-shirts reading: "Ma Bell is a Cheap Mother" worn during a labor dispute were unprotected, reasoning that the slogan was offensive and undermined workplace discipline. By contrast, in *Southern California Edison*, 274 NLRB 1121 (1985), the Board found protected the slogan "Stick Your Retro" on buttons worn by union members to protest a particular company proposal for "retroactivity."

Section 7 rights can also yield when "special circumstances" override the employees Section 7 rights and legitimize the regulation of such apparel. *Evergreen Nursing Home & Rehabilitation Center*, 198 NLRB 775, 778-779 (1972). As the Board noted in *Komatsu*, supra, it "has previously found such special circumstances justifying the proscription of union slogans or apparel when their display may jeopardize employee safety, damage machinery, or unreasonably interfere with a public image that the employer has established, or when necessary to maintain decorum and discipline among employees." 342 NLRB at 650, citing cases. "The special circumstances exception is narrow and a rule that curtails an employee's right to wear union insignia at work is presumptively invalid." *E & L Transport*, 331 NLRB 640, note 3 (2000). The Board recently reiterated their rules in *Register Guard*, 351 NLRB 1110, fn. 2 and 1137 (2007).

In *Mead Corporation d/b/a Escanaba Paper Company*, 314 NLRB 732 (1994), the employer, which operated a paper mill, prohibited the display of buttons, t-shirts and hats containing various slogans relating to the contract negotiations and other concerns. The employer argued that the messages (such as "Remember '89" and "No Scab") contributed to a hostile atmosphere in the plant and caused harm to the company's operations. The Board rejected these contentions, finding no evidence to support the "special circumstances" exception and, rejecting as speculative the company's arguments. Thus, the Board agreed with the judge that "the mere possibility that these messages might make a negative impression on customers and suppliers did not outweigh the employees' Section 7 right to wear the items." *Id.*, 314 NLRB at 733. *Escanaba Paper*, which like the instant case, involved a paper mill at which the

production employees have virtually no contact with the general public and little contact with Respondent's customers, is directly on point.

5      b. Respondent Failed to Prove that Its Ban Fit Any Exception to the Board's Rules on the Wearing of Insignia on Clothing.

10      In this case, the red "no violence" t-shirts express protected concerted activity. As Marshall, Morris, Abdou and Harrelle each explained, the Union was upset with Respondent's apparent lack of action towards Mustin after he had threatened a Union member with violence. As Human Resources Manager Shannon Haddad and Larouche both admitted, the rules against violence are supposed to apply to everyone, unit and non-unit alike. The record evidence established that the Union created the "no violence" shirt in order to promote workplace safety and freedom from physical abuse, and to protest what some considered a double standard at work: other Unit members were being suspended immediately for suspected workplace violence, while in July 2008, Mustin, a supervisor who had threatened a Unit member appeared to escape any punishment at all. The employees' decision to wear the "no violence" shirts was thus protected concerted activity as well as protected union activity.

20      Given that the t-shirts expressed concerted protected conduct, Respondent can only ban their wearing of this message under very limited circumstances, none of which are present here. The "customer contact" line of cases has been fully litigated over the past two decades or so, and seems to establish that the defense is primarily applicable to employees in the service industry who have direct customer contact: hotel desk clerks, package delivery personnel, sales or counter clerks, etc. As the Board noted in *United Parcel Service*, 312 NLRB 596, 597 (1993), the only special circumstance that might arguably apply is where the display of union insignia may "unreasonably interfere with a public image which the employer has established as part of its business plan." Here, of course, there is no evidence of such a "business plan" centering on a "public image" that requires protection or special consideration.

30      Nor does a defense that the slogan involved was demonstrably and recklessly false afford Respondent a reason to ban the t-shirts. The word "violence" with a single red line through it meaning "no" cannot possibly be characterized a "deliberate or reckless untruth" so as to forfeit the Act's protection. See *Honda of America Mfg.*, 334 NLRB 751, 752 (2001)(statements criticizing employer agent's intelligence about a compensation dispute found protected as the statements were tied to a labor dispute and related to an employee's belief that a supervisor failed to understand policies). Here, it is undisputed that a supervisor threatened an employee with physical harm. For that reason alone, the Respondent cannot validly contend that the message on the t-shirts could be unprotected as "a deliberate or reckless untruth." The statement simply decries violence.

40      Respondent's justification for the ban seems to me to be contrived. Its concern that the "no violence" t-shirts might somehow be taken negatively by visitors to the production floor fails both from a common sense standpoint and from Respondent's own testimony. First the slogan itself was not tied in any way to the Respondent. It simply denounces violence, which is so commonplace in our current society that I would assume that a visitor would simply take it at face value. Moreover, Levesque testified that the t-shirt would be inappropriate and unacceptable even when worn on shifts where there is no possibility of them being seen by visitors, such as the third shift. Respondent also seems to assert that the t-shirt in some way negatively affects its right to discipline in the workplace as it somehow undermines Mustin's authority. If that is true then the CAT notice would as well. I do not believe this is a credible defense or justification for banning the t-shirt. I believe that the reason for the ban lies in the relatively poisonous relationship that seems to exist in this mill between management and the

Union and was intended to put a stop to the Union's legitimate protest of an apparent double standard for responding to workplace violence. Thus I find that the ban on wearing the "no violence" t-shirt imposed an unlawful restriction on Section 7 activity and was likewise directed at protected union activity in violation of Section 8(a)(1) of the Act.

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c. Respondent Unlawfully Threatened Employees with Termination if They Refused to Remove the "No Violence" T-shirts.

10 Poulin failed to specifically deny telling Marshall that the failure to obey his directive could result in termination. He admitted that the offense for refusing his "request" would have been insubordination, which is punishable by termination. I have already credited Marshall's testimony over Poulin's on this matter. As I noted above when making this credibility finding, Marshall's testimony that he and Farmer were threatened with termination is supported by both  
15 immediate cessation by the Union of wearing the t-shirts and by its CAT Notice protesting Poulin's threat of termination. Given the animosity that exists in the mill between the Union and management, it seems to me the Union would have not ceased wearing the shirts if Poulin only told Marshall that he could be subject to some unspecified discipline if he refused to take off the offending t-shirt. By threatening employees with termination if they refused to remove the "no  
20 violence" t-shirts, which I have already found that they had a legal right to wear, Respondent violated Section 8(a)(1) and (3) of the Act. See *St. Luke's Hospital*, 314 NLRB 434, 440 (1994).

d. Respondent Also Violated Section 8(a)(5) of the Act by Unilaterally Banning the Wearing of the "No Violence" T-shirts.

25 I further find that because Respondent promulgated the t-shirt ban without notice to the Union or bargaining, it additionally violated Section 8(a)(5) of the Act. See *St. Luke's Hospital*, supra (employer's claim of special circumstances justifying the ban on union insignia rejected; Board upheld ALJ's finding of violation of Section 8(a)(5), concluding that the employer  
30 violated 8(a)(5) "by unilaterally promulgating and implementing changes to its established dress and appearance policy without first bargaining with the Union). The Union in no way waived its right to notice and bargain as the ban was imposed unilaterally and as a done deal. Offering to bargain with the Union at a point well after the unilateral imposition of the ban does not cure this unlawful act.

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C. Did Respondent Suspend Abdellatif El Berchoui in violation of Section 8(a)(1) and (3) of the Act?

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#### 1. Overview and Background

As noted in the previous section of this decision, El Berchoui or Abdou is the Chief Steward for the Union and is a member of its five-member Executive Board. Mill Manager Levesque testified that Abdou is a good employee. Indeed, prior to 2009, in Abdou's nine years  
45 of service with Respondent and its predecessor, he had received only a single written warning. That warning was issued by the predecessor owner in 2003 for leaving a safety meeting at work in protest for what he perceived as the Company's lack of attention to safety issues. Abdou has been the Union's Chief Steward for six or seven years and as noted above, helped create the  
50 "no violence" t-shirts and wore that shirt at work.

On November 30, Abdou met with fellow employee Rick Rossetti and asked him about a report the Union had received as a result of an information request. As will be discussed in



detail below, the reports contained, inter alia, a summary of an interview Rossetti and a co-employee Robert Redman, had with an investigator hired by Cascades to investigate an incident in which Rossetti and Redman were involved. On December 3, Rossetti complained to Haddad about that meeting and Haddad began an investigation. On December 12, she  
 5 suspended Abdou and thereafter, Respondent issued Abdou a ninety day suspension beginning December 12 and ending in March 2009. Before the final decision was made to issue the suspension, Respondent went back to an investigation of two other employees and used information gathered in that investigation against Abdou. A brief summary of the events leading to the suspension is set out below. Thereafter the detailed testimony and documentary evidence  
 10 adduced will be set out and discussed.

In late August 2008, Abdou learned that the Employer had placed two bargaining unit members, Kurt Farmer and Jason Allen, on indefinite suspension over unrelated incidents. The Union filed two grievances challenging their suspensions. In order to investigate the two (then  
 15 suspension) grievances, the Union submitted the first of several information requests to the Company. Abdou testified that on or about September 28, the Union submitted information requests to Haddad, who was then acting Human Resources Manager, seeking information about the Farmer/Allen discipline. About two months later, Respondent converted the suspensions to discharges, terminating both Farmer and Allen on October 29. Allen was fired  
 20 for his involvement in a paper break that caused an "unreasonable delay in the resumption of operations which caused a shut down of operations at the Versailles mill" on about August 23. Farmer was fired for a litany of incidents of suspected misconduct, many of which involved violence or threatened violence.

On October 30, the Union requested certain information from Respondent related to the Allen and Farmer terminations. Just over three weeks later, on or about November 24, pursuant to the Union's information request, Haddad provided the Union with a copy of the 22 page investigative report concerning Farmer that was created by UHY Advisors (UHY), Respondent's  
 25 hired investigators, along with copies of their interview summaries, dated October 27 (the investigative report or report). Eric Larouche admitted that he was aware that the Union had filed an unfair labor practice charge alleging an unlawful delay in furnishing the report to the Union. In her cover letter to the investigative report, Haddad noted that some of the interview summaries had been "redacted to protect the confidentiality of some witnesses. In light of a history of intimidation, Cascades is concerned about the safety of these individuals." Haddad,  
 30 who performed the redactions herself, did not redact the names of a half dozen employees, including Rick Rossetti and Robert Redman.  
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Abdou testified that in late November, shortly after its delivery to the Union, he received and reviewed the lengthy typed investigative report. After reading the report, on about Sunday,  
 40 November 30, Abdou decided to follow up on some questions he had. Abdou testified that, although many names were blocked out in the UHY report, he was able to decipher the employees' identities but consciously chose not to question any of those individuals, "just to avoid any problems" or any claim by Respondent of bothering, harassing or intimidating anyone.

## 45 2. The November 30 meeting and its ramifications

### a. Abdou's Version of the meeting

From reading the Farmer investigative report, Abdou determined that the investigators  
 50 had interviewed his co-workers Redman and Rossetti, who supposedly had told the investigator that Farmer had made certain intimidating statements to Rossetti on May 17. The portion of the report resulting from UHY interviews with Rossetti and Redman takes up part of one page and

reads as follows:

“After interviewing Rick Rossetti and Robert Redman on two different occasions, it is their account that on a second shift on May 17, 2008, they were labeling, plugging and moving paper rolls in preparation for shipping when they observed Kurt Farmer arriving at work on an overtime assignment. They stated that Farmer confronted them and was yelling, mainly at Rossetti, about the fact that they were taking his overtime away from him by doing the work they were doing. He was irate and asked them who told them to do it. Rossetti told Farmer that Supervisor Jeff Dearborn told them to do it. They stated that he asked for Dearborn’s home telephone number and Rossetti told him that it was in the office. They stated that after Farmer went into the office he came back to them and still irate, accused them of hiding the telephone number. Rossetti went into the office with Farmer and pointed out the telephone number and Rossetti walked out as Farmer was placing the phone call. Rossetti and Redman stated that Farmer came back to where they were working again after calling Dearborn at home. Rossetti stated that Farmer bumped into him and accused him, Rossetti, of bumping into him. Redman did not see the bump but stated that he heard Farmer say it to Rossetti. Rossetti then got into the lift-truck and began backing up and Farmer accused him of almost running him over. Redman saw it and states that it was not even close. Rossetti and Redman stated that Farmer then began giving Rossetti a bad time about not wearing the seatbelt while operating the lift-truck. Rossetti and Redman stated they saw Farmer talking to ‘Abdu’ prior to when he first came over to them and again after he called Dearborn at home. They also saw ‘Abdu’ watching Farmer yelling at them from inside the window of the break room. They can only surmise that “Abdul” may have put Farmer up to causing the trouble.”<sup>12</sup>

Abdou could see from the UHY statement concerning Rossetti and Redman that his name was involved, as the investigator had reported that “Abdul” had supposedly “put Farmer up to causing the trouble.” Thus, after reading the report, Abdou, who works with Rossetti on the “D” shift, decided to speak to Rossetti about the UHY statement.

Abdou testified at length about his reasons for speaking to Rossetti. He testified that as Chief Steward he was investigating the Farmer/Allen termination grievances. He testified that another reason he chose to speak to Rossetti was a) because Rossetti was on his crew and therefore accessible, b) he had always had what he considered a good relationship with Rossetti, c) Rossetti’s name was not redacted or blacked out on the report, and d) because Rossetti had approached Abdou after Rossetti’s interview with UHY about the May 17 incident, and e) had admitted not having union representation for that interview, and Abdou wanted to express his concern about “not having somebody with you.” Abdou testified that another reason was to verify the accuracy of the statement that the investigators had made. As Chief Steward, Abdou is responsible for the Union’s case at arbitrations and routinely conducts some of his own grievance investigations. According to Union President Harrelle, Abdou has full authority to process grievances.

Abdou saw Rossetti on November 30 and asked to Rossetti to talk with him when he had time. Abdou testified that when Rossetti did come to him, he told Rossetti, “Rick, I have a report from the investigation back from the Company. That is the page that has your statement. Do me a favor? Go over it and let me know if that’s a correct statement that you made. If not, tell me what’s not correct about it.”

According to Abdou, Rossetti said part of it was correct and part of it was not. According

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<sup>12</sup> Abdou’s name is frequently misspelled in the UHY documents.

to Abdou, Rossetti indicated that the portion of the report that mentions Abdou was the part that was not correct. Then he said, "You know that Farmer was out of control." Abdou responded, "Was he really out of control?" Then before Rossetti could reply, Abdou stated, "Listen, me personally, I think that Union people should take care of other Union people." The conversation ended at that point. Abdou denied telling Rossetti to keep his mouth shut or to mind his own business. He denied threatening Rossetti in any way. Abdou did not speak with Redman about the report as he felt, knowing him, that all the statements in the report were attributable to Rossetti.

On the same night, November 30, Abdou also spoke about the Farmer termination report with fellow employee Chris Morris, who, like Rossetti, gave Cascade's investigators information about some of the events leading to Farmer's termination. Morris testified that he had been interrogated by investigator Jack Luty of UHY Advisors on behalf of Cascades on three occasions. On the last occasion, he was asked by Luty in 2008 about a paper break. Luty wanted to know if anyone was talking about a paper break before it actually occurred. This was in connection with an investigation of employee Jason Allen. Morris met with Luty in the Company offices and was represented by Rick Geer, a Union officer. According to Morris, before the interrogation started, Luty told him that Geer could not be there for the interrogation. He told Morris that the questioning was not about him, or any disciplinary matter involving him. Luty said that under the circumstances, he did not have a right to Union representation in the questioning. Geer argued the point and suggested that Luty get a witness himself. Luty left to get Haddad, but she was busy. So Luty dropped the point and began questioning Morris.

With respect to meeting with Abdou on November 30 to discuss this interview, Morris testified that he was on Abdou's crew that night. Abdou came to him and showed him a copy of what Luty had written following Morris's interrogation. Morris read what was written because he was concerned that something he had told Luty might be misconstrued by his supervisor. After he had finished reading the report and telling Abdou of his relief, Abdou took back the report and left. This conversation lasted only about two minutes. At some point in December 2008, Morris was called by Haddad. She told him that the Company had given the Union some requested information.

#### b. Rossetti's version of the November 30 incident

Ricardo Rossetti is employed by Cascades as a shipper. He has been employed by Cascades or its predecessor for about 8 years. Rossetti testified that on May 17<sup>th</sup>, there were trucks waiting for the paper rolls he and Redman were processing. He reiterated in detail the Kurt Farmer confrontation that is covered in both UHY's report and his affidavit, though adding some inflammatory language that does not appear elsewhere in written accounts of the incident. Rossetti also added for the first time that Farmer accused him of hitting Farmer with his hand though all previous accounts indicated that Farmer accused him of bumping him with his body. From start to finish Rossetti believes the incident spanned about 20 minutes, most of that time with both he and Redman continuing to work while Farmer made his calls and ranted. Rossetti then claimed that Farmer went back into the cafeteria and again met with Abdou, who Rossetti claims never left the cafeteria. Then Rossetti claims Farmer came back onto the floor and Rossetti told Farmer to drive the forklift and Farmer said he did not have a license to drive it. The Rossetti claims that about an hour later, and after Rossetti and Redman had finished their work, Farmer got on the fork lift and moved paper rolls that had already been separated. According to Rossetti, he and Redman then left the floor to load trucks with Farmer running around on the fork lift. Rossetti also claimed that on May 17<sup>th</sup>, Farmer could have just pitched in and helped them.

Based on inconsistencies in his testimony and other documented accounts of the May 17 event, I find Rossetti to be capable of and actually embellishing the account of the May 17 incident, and the November 30 incident, and further given his generally aggressive and combative behavior on the stand, I do not find Rossetti to be a credible witness.

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In his affidavit given to UHY investigators in December 2008, Rossetti states that he met with Abdou and reminded him that he had previously told Abdou what he had said to investigators about the May 17<sup>th</sup> incident. Respondent's counsel asked Rossetti what he said in that meeting. Rossetti evidently misunderstood the question and began an account of the meeting in November which led to Abdou's suspension. On that day, according to Rossetti, Abdou had seen him and asked him to come to Abdou's worksite when he had a chance. Later Rossetti did go to Abdou and found that he had the UHY investigative report opened to the page where Rossetti and Redman's statements had been summarized by UHY. According to Rossetti, Abdou asked if he had said everything in the one page summary and inquired if it were correct. Rossetti read the page and indicated it was accurate except maybe the bottom line which Rossetti called "saying the intimidation or some, some stupid, little line."

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Rossetti testified that he then told Abdou that Farmer was out of control. Abdou expressed surprise and said "What". Rossetti then said, "Well, what was I supposed to do?" Rossetti testified that Abdou then said "keep your mouth shut." The meeting, which Rossetti estimated took five minutes, ended at this point and both men returned to work. Rossetti testified that he did not remember Abdou telling him that Union members should look out for other Union members.

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Rossetti then volunteered without questioning a couple of rambling statements about being harassed on the job, which in response to a question from me, he attributed to Farmer. In response to Respondent's counsel, Rossetti said that the last line of the report Abdou showed him reads: "They can only surmise that Abdou may have put Farmer up to causing the trouble." Rossetti testified that this was wrong and he could not have surmised this because he had no way of knowing what was in Abdou's mind.

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According to Rossetti, when Abdou allegedly told him to keep his mouth shut, "alarms went off in his head telling him to watch myself, be careful." He stated: "It's a union shop. It's a brotherhood, word travels fast, especially bad news or if there's somebody supposedly, quote, a 'rat', you know, watch yourself to protect yourself, so that kind of like when I was at the end of that paragraph, in my mind, in my own mind was that watch what's going on."

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Rossetti was then asked that when he said protect yourself, what he meant. Rossetti replied: "Any kind of stupid things that these small minded people might think in the middle to do to cause me any kind of harm, or damage to my vehicle or anything like that, because there's been incidents in the parking lot of where people had their windows shot out or fire extinguishers thrown through them, or tires slashed and various things, retribution."

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Rossetti was asked if he feared retribution from Abdou, and he answered "No". Upon being asked if he brought this conversation to the attention of management, Rossetti answered: "The conversation as far as being threatened or anything, no. My conversation with the company was that I would have liked to have known they were giving the paper work to the union board at the same time they received it." He added that his concern related to the report being available to other employees, noting that he usually keeps conversations with individuals to himself.

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Rossetti reported the incident to Haddad the following Monday. He also asked Redman

if he had been approached by Abdou and learned that he had not. When asked by Respondent's counsel whether he had used the words "strong arm" to Haddad when reporting the incident to her, Rossetti responded: "Strong arm is, is, a word that for, for me to use to say that the people are, some people are very powerful to take other smaller people to groups, to  
 5 cause a little bit of discomfort. So, for, for me to say it, in all honesty, that Abdou would come out with any kind of threats or anything like that, absolutely not. He has his, we call them the "minions" would come out and drive by, see what we're doing, the rumors and stuff to get the ball rolling."

10 Asked who the "minions" were, Rossetti testified: "Whoever Abdou can gather together as a group. Then he testified that he did use the term "strong arm" because he felt like he was being strong armed when Abdou showed him the investigative report. He told investigator Luty that when he gave an affidavit in December related to this incident. He testified that he then had Luty line out the sentence in the final version of his affidavit that mentions "strong arm" because  
 15 it could be used in many different ways.

According to Rossetti, he did not complain about it about the May 17 incident. The first time he spoke about being strong armed with anyone in management or connected to management was when he was questioned by Jack Luty about the incident in or about  
 20 December 18.

After filing his complaint with Haddad, Rossetti met with her and Mill Manager Levesque. Levesque asked him if he would give a sworn affidavit and Rossetti said he would. Rossetti met with UHY investigators on December 18, 2008 and answered their questions. The answers  
 25 were typed in form of a statement, which Rossetti swore was accurate and signed. In pertinent part, this statement reads:

30 "On or about May 17, 2008, while working a second shift, I was with another employee, Bob Redman. We were processing paper rolls for shipment at the direction of supervisor Jeff Dearborn. While we were processing the paper rolls, I saw employee Kurt Farmer arrive at the mill. Farmer saw Redman and I processing paper rolls and I saw him go to the Chief Steward of our union, Abdellatif El Berchoui, ('Abdou'). Kurt Farmer came over to Redman and I after he spoke with Abdou. Farmer was obviously mad and he was out of control. He was very animated. He was finger-pointing and yelling. I saw Abdou watching from inside of the break-room through the window.  
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Farmer yelled things like: "I signed up for overtime with Barry Benson to do this". Farmer ranted for at least five minutes and possibly 10 minutes. Abdou was watching for the entire time. I told Farmer that we were assigned to process rolls by our boss, Jeff Dearborn. Farmer asked for Jeff Dearborn's home telephone number and I directed him to where he could find the  
 40 number in the office. I saw Farmer again talk to Abdou after he had called Jeff Dearborn at home. Farmer came back to us after he spoke to Abdou and was still obviously mad. At one point he bumped his body into me and accused me of bumping into him and said, "Where are the cameras". At another point Farmer falsely accused me of trying to run him over with the "Donkey Dick" truck while I was driving it. I don't recall if Abdou was still watching from the  
 45 break-room window when Farmer returned to us the second time after calling Jeff Dearborn and after talking with Abdou again.

I was subsequently interviewed by independent investigators who were hired by Cascades. I told the investigators the details of the May 17 incident. On December 3, 2008, I made a telephone call to Shannon Haddad, the Cascades Human Resources Manager and told  
 50 her that I had just recently been approached by Abdou while at work. I told her that Abdou had a copy of the report that had been prepared and submitted by the independent investigators.

When Abdou showed me a portion of the report that detailed what I had told

investigators about the May 17, 2008 incident, he asked me to read it and asked if there was anything written in the report I did not say. I told him there wasn't. I said: "What was I supposed to do" and Abdou said to me "Keep your mouth shut". I reminded Abdou that I had previously told him what I had said to the investigators about Farmer and that May 17<sup>th</sup> incident. During that conversation with Abdou about the report, Kurt Farmer's name was never mentioned by Abdou nor did he ever tell me that he was conducting an investigation. At the end of the conversation, I made reference to Farmer when I said to Abdou (in reference to Farmer) "He was out of control and you know it." Abdou knew I was referring to Farmer and his response to me was "What". It was in a tone suggesting that he was surprised that I thought Farmer was out of control.

I have never felt intimidated by Kurt Farmer, Abdou or anyone else at the mill. I guess it's just my personality and make-up. Other people have been intimidated by them. I know Bob Redman was very nervous when Farmer confronted us on May 17<sup>th</sup>. It is my belief that the reason that Abdou came to me with a copy of the report was to let me know that they, the union, have the report and that they all know now what I said to the investigators and that I am a snitch. Since I returned to work from vacation, I have been getting a lot of eyeballs from co-workers and I feel like they think I am a snitch and a rat, but I know I did nothing wrong. Therefore I believe the union has told people what I said in the report. "

UHY investigator Frank Rudewicz, who participated in the preparation of Rossetti's statement testified that Rossetti stated to the investigators "I believe Abdou was attempting to strong arm me." He testified that Rossetti asked that that statement be stricken before he signed it. Rudewicz was not totally sure whether Rossetti denied making that statement as Jack Luty was the person who interviewed Rossetti.

Concerning the foregoing recitation of Rossetti's testimony and his affidavit, it is apparent that Rossetti's version of the events described varies from testimony to affidavit and even from one part of his testimony to another. He in some parts of his testimony seems to absolve Abdou of doing anything wrong and in others, seems to want to hang him out to dry. What I find significant about all of it is that his complaint to Haddad on December 3 was that the Company had not given him notice of the report being given to the Union simultaneously with the giving. He was clearly not intimidated by Abdou nor was he threatened in any way by Abdou.

### 3. The May 17 incident and the Investigation Related to it

A great deal of evidence was adduced with respect to the May 17 event. Because Respondent relies in part on Abdou's part in the incident and his subsequent interview about it in its decision to suspend him, I feel compelled to set out other evidence adduced about it. Therefore, the additional relevant evidence about the May 17 event and the subsequent investigation into it is set out below.

The May 17 incident came to light during the investigation of another incident. Eric Larouche testified that on one of the night shifts on or about August 20, 2008, there was a paper break on the production line and, additionally, a massive pulp spill in the basement of the mill which created a safety concern. A bargaining unit member named Maury called Supervisor Barry Benson at home and informed him he should come into the mill, advising Benson of the spill. Maury also related that no one was taking action to restore the paper machine to operational status following the paper break.

The following day, the Company received a complaint from Maury that he had been intimidated by fellow employees Jason Allen and Kurt Farmer on that night. Larouche was given

the okay to investigate by Mill Manager Levesque so he hired UHY to conduct an investigation. The investigation ultimately had three parts, the first being the events of the night of August 20, the second being an incident they learned of that occurred on May 17, involving Kurt Farmer, and the third was another incident involving Farmer that occurred on July 30.

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The investigations took about two months to complete and in October, the company finalized discipline related to Farmer and Allen, firing both men. During these investigations the name of Chief Union Steward Abdou El berchoui surfaced. According to Larouche, employee Richard Rossetti mentioned seeing Abdou coach Farmer and saw Abdou watch the confrontation that occurred between Farmer and Rossetti. According to Larouche, Rossetti also reported that Abdou talked with Farmer after the confrontation.

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Abdou was interviewed about his role in the May 17<sup>th</sup> incident on September 24. UHY reported to Larouche and Haddad that according to Abdou's answers during the interview, he did not see the incident and did not speak to Farmer about it. Abdou told UHY that he learned of the incident after the fact and that Abdou had raised questions about what he could say because of his Union role as Chief Steward.<sup>13</sup>

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After UHY finished its report on the three investigations and submitted it to Cascades, the Union filed an information request seeking to have a copy of the report turned over to it. The request was filed with Larouche's heir apparent, Shannon Haddad. Larouche authorized her to turn it over to the Union and ultimately she did.

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#### a. Abdou's Detailed Version of the May 17 Event and Subsequent Investigation

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Abdou gave his version of the May 17 event and his part in the investigation of the event. As noted earlier, Kurt Farmer was terminated by Respondent on October 29, 2008. On May 17, 2008, Farmer, Abdou and some other unit members were involved in an incident at the plant. Abdou was working second shift and walked from his work post to the Company cafeteria to get something to drink. While Abdou was in the cafeteria, Farmer came in and spoke with him. Farmer complained that he was scheduled to come in on the shift and work overtime processing paper rolls for shipment. His complaint was that he found two other employees, Rick Rossetti and Bobby Redman, doing that job thus denying him the opportunity for overtime. Abdou described Farmer as being a "little ticked off about it." Abdou testified that he understood why he was ticked off and said that he needed to find out why the two employees were doing what Farmer considered his work. He noted that if they had been directed to do the work by management, they had to do it.

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Abdou testified that at this point, Farmer left the cafeteria and approached Rossetti and Redman. Abdou could observe this through a window in the cafeteria. He watched as Farmer began an animated conversation with Rossetti. Abdou could not hear what was being said and could not tell whether the conversation was heated or friendly. He then observed Farmer and Rossetti walk toward the shipping office on the other side of the plant. His observation of the men took just a few minutes. At this point, Abdou returned to his work station. A few minutes later, Farmer again approached Abdou and told him that he had called Shipping Supervisor Jeff Dearborn because Rossetti had told him that Dearborn directed him and Redman to process the rolls of cardboard. Farmer told Abdou that he spoke with Dearborn and learned that the two

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<sup>13</sup> The UHY report of this interview will be detailed at a later part of this decision. At this point, I would note to the reader that the interview report proved to be incomplete and in some respects wrong.

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employees were directed to do it. Abdou testified that at this point Farmer left to go home. It should be noted that from the cafeteria, Abdou could see the area where Rossetti and Redman were working. From Abdou's workstation, his view of his area was completely blocked. It should also be noted that neither from the cafeteria nor his workstation could Abdou hear what Farmer and Rossetti were saying.

Later during the same shift, Rossetti approached Abdou and according to Abdou, was blowing off steam about the incident. Abdou testified that he told Rossetti that the matter was over, that they had been directed to do the work and they were doing it and that was the end of the matter.

Abdou testified that a couple of months later, Rossetti approached him and told him that he had talked to investigators hired by Respondent and answered their questions about the May 17 incident. Abdou testified that his only question of Rossetti was whether he had had Union representation during the interrogation. Rossetti said no. According to Abdou, he then told Rossetti, "It's a good practice to have somebody else with you in the room when you make a statement or anything else. There's always somebody that can verify as to what you say or didn't say."

Abdou was himself interrogated by the investigators in September.<sup>14</sup> They wanted to know what was said between Farmer and Rossetti and Abdou having not heard the words spoken could not tell them. Abdou was called at home to come to meet the investigators by Shannon Haddad. Abdou believes that he took Union Steward Marshall to the meeting with him. There were two investigators at the meeting, Frank Rudewicz and Jack Luty, both with UHY. He had previously met both men when he acted as an employee's representative in another investigation involving other employees. At this meeting, according to Abdou, he told them that he was not refusing to answer questions about the May 17 meeting, but that he wanted the questions in writing and wanted to show them to the International Union's representative before answering them. During this meeting, Abdou did not have any feeling that the investigation involved him in any capacity other than as a witness to an event. He did testify that the investigators asked him why he did not get involved in the dispute between Rossetti and Farmer. He told them that in his judgment, his involvement would not solve anything and might even make the situation worse.

. By memo dated September 24, 2008, the UHY investigators memorialized their interrogation of Abdou. It reads:

"Mr. Abdellatif ("Abdu") was interviewed at Cascades on 09/24/08 by Jack Luty and Frank Rudewicz. Abdu was interviewed to determine if he had anything to with a work-place confrontation between Kurt Farmer and Ricardo Rossetti and Robert Redman during a shift when Rossetti and Redman were processing paper rolls on or about May 17, 2008. Redman and Rossetti told investigators that Farmer confronted them in a harassing manner as to why they were processing paper rolls during their regular shift when it is supposed to be an overtime assignment. Rossetti and Redman stated that they saw Farmer speaking with Abdu just before he confronted them and after the confrontation and that they also saw Abdu watching the confrontation through a window inside the break-room.

Abdu stated that he had nothing to do with the confrontation and he did not find out about it until sometime afterward. He stated he did not talk to Farmer about it and cannot recall

<sup>14</sup> Abdou's testimony was that this interrogation took place in June, but his memory of dates may be faulty as the best evidence is that this interview took place on September 24, 2008.



how he found out. It was during the interview, during general conversation about the work-place, that Abdu made statements as to the responsibilities of the Back Tender position and how the Back Tender is in charge of the crew. He stated that whatever anyone does on the crew is his responsibility and that the Back Tender should know what everyone is doing.”

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The first time Abdou saw this document about him was at this hearing. Abdou testified that he was told that the reason for the September 24, 2008 interrogation was to determine the responsibilities of the back tender job position as that was relevant to the Jason Allen incident. After reading the document, Abdou testified that it was not accurate, as it left out many details he supplied about the May 17 incident and the Jason Allen incident. He denied the statement they put in that he did not talk to Farmer about the May 17 incident. The document does not reflect his request that questions be put in writing. Specifically, Abdou testified that he told the investigators on September 24<sup>th</sup> that Farmer came to him in the cafeteria, he told them of his advice to Farmer to go to Rossetti and Redman and see if they had been directed by management to do the job they were doing. He also told them that there were things he knew about the confrontation between Rossetti and Farmer that he did not feel comfortable relating until he checked with Union counsel, and asked that those questions be put in writing so he could seek clarification. Those questions related to what happened after Farmer left the cafeteria and what he related to Abdou after the confrontation.

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What the UHY memo of the September 24 interview with Abdou states is evidently what Respondent's management, and specifically, Larouche and Haddad, knew about it until much later. They received this memo at some point in October. Without crediting the memo for being accurate or complete, I would note at this point, that it points out a conflict between what is attributed to Abdou and what is attributed to Rossetti and Redman. Though that conflict is readily apparent, neither Larouche nor Haddad or any other member of management thought it significant enough on any level to pursue the matter further.

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#### b. The Investigators' Report of the May 17 Incident

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Then UHF investigator Jack Luty testified that he conducted an investigation into the May 17<sup>th</sup> incident. This investigation began on August 25. Prior to UHY's investigation into the May 17<sup>th</sup> incident, no other investigation had been conducted. During UHY's investigation, Redman was interviewed at the mill and Rossetti at his home. They were jointly interviewed on another occasion at a nearby hotel.

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Luty testified that the May 17<sup>th</sup> incident was investigated only after it came to light during an investigation of Kurt Farmer and Jason Allen for another incident. Luty in his testimony reviewed his memory of what Rossetti and Redman told him about the May 17 incident. It is not repeated here as all versions of the event have been described more fully elsewhere in this decision. However it is of interest that he described his September 24 interview of Abdou. A pertinent portion of this interview was in response to a question by Respondent's counsel: "Now, can you describe for me how that meeting went?" Luty answered, "It wasn't real long and it started with asking him (Abdou) about the May 17<sup>th</sup> incident and he denied being there, he said that he didn't find out about it until after the fact and didn't know how he found out about it."

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Shortly after this exchange, Luty was asked if he reported what happened in this interview to Cascades management and he answered affirmatively. He then specifically named Larouche and Haddad as the management he notified. I would again point out at this time it was clear that someone was not telling the whole truth as Abdou had been put at the scene of the incident and a partial participant in it by Redman and Rossetti. Yet no one, neither the

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investigators nor Cascades Human Resources management thought the conflicts in the interviews significant enough to delve further into the matter. Nor did they think that Abdou's failure to intervene in the confrontation between Farmer and Rossetti to be significant enough to follow up on at this point in time. That would change in the coming months.

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The UHY report prepared by Jack Luty and his co-investigator Frank Rudewicz contains a summary of the facts about the May 17 incident. It begins with the Rossetti-Redman report set out above at page 17. The account then continues:

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"Kurt Farmer stated that during a 2<sup>nd</sup> shift in May, 2008, he was asked to work overtime 2<sup>nd</sup> shift to work on preparing paper rolls for shipment and that when he arrived, he saw Rossetti and Redman working on the paper rolls. He stated that he became annoyed and asked Rossetti who told them to do the work. He stated that Rossetti told him that Jeff Dearborn assigned them. Farmer stated that during the verbal exchange Rossetti bumped into him. He also stated that he also complained about Rossetti not wearing his seat belt while driving the truck. Farmer stated that since his overtime was being handled, he did not have anything to do. He stated that he didn't want to get into trouble for leaving the plant without permission so he called Dearborn at home and Dearborn confirmed that he assigned the two guys to do the job. Farmer stated that after talking to Dearborn he went home.

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Jeff Dearborn stated that he recalls Farmer calling him at home regarding this incident. Dearborn stated that he told Farmer to go home.

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Farmer was also asked about him talking to union official, Abdellatif El Berchoui 'Abdu' just prior to and after the confrontation. Farmer did not recall if he spoke to Abdu and if so what he said. He stated that he and Abdu are friends and if he spoke to him, it could have been about anything. Farmer was asked about the perception that he has become a bully whenever there is a disagreement between workers. He denies that and stated that the only person who has ever accused him of trying to intimidate is David Mowrey. "

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4. Respondent's Investigation of Abdou following Rossetti's Complaint about His November 30 Meeting with Abdou.

#### a. The Complaint and Haddad's Response

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On or about December 3, Shannon Haddad received a phone call from Rossetti complaining of Abdou and she made some notes of this call. This conversation was followed by another on the same date again by phone. During these calls, Rossetti, inter alia, expressed surprise that the Union had a copy of the investigatory notes. Haddad testified that the words "strong arm" appears in her notes because Rossetti used them. According to her memory, in response to a question she asked Rossetti about whether he felt intimidated by the way he was approached by Abdou, Rossetti replied that he "wouldn't use the word intimidated, but the word is really strong armed, it's an old school word, that's really what he was trying to do, trying to strong arm me."

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After her first conversation with Rossetti, Haddad went to Larouche with what she had learned. Larouche testified that he was approached by Haddad on this date and was told by Haddad that Rossetti had contacted her complaining that he had been strong armed by Abdou. According to Larouche, he was told that Abdou asked Rossetti to read the investigative report. Rossetti asked Abdou what was wrong with the report and what he was supposed to do. According to Rossetti, Abdou said to keep his mouth shut. Rossetti also complained that he felt caught off guard by not having advance notice of the release of the report to the Union.

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Though Larouche was technically still in charge of the investigation of Abdou as it went forward, Haddad had more first hand knowledge of what the Company did and why and thus her testimony will be relied upon heavily as it is first hand.

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At this December meeting between Haddad and Larouche, the two managers discussed the matter and decided to get more information from Rossetti about when the incident happened and to reach out to others named in the report so they would not be taken off guard if they were approached about the report. She then called five or six employees named in the report and told them that it had been turned over to the union. She denied in her testimony at this point that she asked these employees any questions during her call to them. As noted below, she gave a sworn statement to the UHY investigators in December in which she swears that she, in fact, asked these employees if they had been contacted by the Union to verify the portion of the report that involved their interview by UHY. In JTX 4, a position statement given to the Board in March 2009, Respondent asserted with respect to the calls by Haddad that: "During these calls, the employees volunteered that they had not been approached by anyone from the union regarding their statements since the Farmer report had been released to the Union." Haddad did not testify about any such volunteered information. I believe the only way Respondent could make this claim in March 2009 was if Haddad had indeed asked the question.

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Employee Chris Morris testified that Haddad called him to tell him that the Union had requested information and that it had been given to the Union. Haddad admitted calling Morris, adding the curious claim that she changed her "script" when she reached Morris and discovered that he had requested union representation during one of his interviews in the Fall of 2008 with respect to the Farmer and Allen investigations conducted by UHY. She testified that Morris would have been aware that the Union knew what he told the UHY investigators and would be aware that the Union had the report. She also called Rossetti back.

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Haddad and Rossetti then had a face to face meeting on December 10. At this meeting, Mill Manager Levesque was present. During this meeting, Levesque asked Rossetti if he would give a sworn statement about the topic they were discussing. Following this meeting, a decision was made to suspend Abdou beginning December 12, until an investigation could be conducted by UHY. The decision makers were Haddad, Levesque and Larouche.

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#### b. Abdou's involvement during the investigation

Following his conversation with Rossetti on November 30, Abdou did not hear from management about the conversation for two weeks. Then on December 12, he was told by his supervisor to go see Haddad. He asked if he were in some kind of trouble and was told "maybe." When he met with Haddad, he was informed he was suspended, to leave the facility and not return until notified. Haddad did not disclose the reason for the suspension and gave him nothing in writing at this point. Over the following weekend, Abdou was contacted by the Company and told to meet with a Company investigator on December 15 at the plant. He attended this meeting with Union President Harrelle as his representative. Before the meeting commenced, Abdou met Haddad who handed him a letter dated December 15 and which states:

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"As you are aware, we are investigating your suspected misconduct. Your conduct, if established, would constitute insubordination and may also be in violation of other mill rules. We are working to conclude the investigation as quickly as possible and we will provide you with an opportunity to be interviewed on Monday, December 15<sup>th</sup> at 2:00. We hope to conclude our investigation as soon as possible and to determine what action, if any, should be taken as a

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result of the investigation. In the meantime, you are not to return to the premises for any reason, unless authorized to do so by me. I am putting you on notice that Cascades will not tolerate harassment, threats of intimidation by you against any employee who cooperates or provides information in connection with this investigation.”

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Haddad did not offer any explanation about what insubordinate conduct had been committed by Abdou. Abdou and Harrelle then met with the investigators, Frank Rudewicz and Jack Luty. Rudewicz began the meeting by relating that Abdou had not answered their questions about the May 17 incident. Abdou corrected them by relating that he did not refuse to answer questions, noting that he asked for them in writing to review with a representative. According to Abdou, Luty agreed with him and stated his agreement to Rudewicz. The investigators then asked him about his conversations with Farmer on May 17, and this time, Abdou related his version of the conversations. The investigators then asked him why he did not intervene in the confrontation acting as Union Chief Steward or as a Union Executive Board member. Abdou informed them of his belief that his intervention would have made the situation worse. He testified that it is common for Cascades’ mill employees to yell at one another on occasion and nothing comes of it.

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The investigators then questioned him about his conversation with Rossetti on November 30. Rudewicz asked him if he had tried to intimidate Rossetti by asking him about the investigatory report. This took Abdou by surprise and he told the investigators his version of this conversation, much as is set out above in my recitation of Abdou’s description of the November 30 meeting. Then Rudewicz asked him, “You did not tell him to keep his mouth shut?” Abdou replied, “Absolutely not.” Then Abdou told them he knew where this was leading and it was a waste of everyone’s time. Rudewicz asked if Abdou had spoken with anyone else about the report. Abdou then told them that the Company does not have the right to question how the Union handles grievances or internal investigations. He then refused to name any other people stating he feared they would be retaliated against by the Company. The investigators at this point did not assure Abdou that there would be no retaliation against anyone he named. Instead, Rudewicz then threatened Abdou with termination if he did not name names. Abdou then said that the Company would have to terminate him and refused to divulge the name of anyone else he asked about the report.<sup>15</sup> The meeting ended.

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On December 19, Abdou again met with the investigators, this time taking the International Union’s representative with him. The investigators gave him a narrative of the last meeting to sign. Abdou pointed out what he considered errors in it and they retyped it. At this point, the Union representative accompanying Abdou at the meeting stated that it would have to be shown to Union lawyers before it would be signed. Abdou thereafter refused to sign it as he was advised by the Union’s counsel not to sign. The statement, which was corrected but not signed by Abdou, reads:

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“I was initially interviewed in September 2008 by UHY Advisors concerning an incident that occurred on or about May 17, 2008 and involving union members Kurt Farmer, Bob Redman and Rich Rossetti. While I had some information relevant to this incident, I did not disclose it at that time. I explained to UHY that, as chief steward of the Union, I was not sure if I was allowed to disclose the details of conversations that I had with Union members when they involved potential grievances. I was not refusing to answer. I asked UHY to provide questions in writing and I would get back to them. I didn’t receive any questions.

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<sup>15</sup> This threat is not part of the Complaint and was not mentioned by witness Harrelle. It was denied by the investigators. As it was not explored in depth, I will make no findings relative to it.

On December 15, 2008, I was interviewed again by UHY. I was suspended from work on December 12, 2008. During my interview on Dec. 15<sup>th</sup>, I told the investigators the following:

On May 17, 2008, while I was at Cascades working a second shift, one of the union members, Kurt Farmer, came to me regarding a problem. He was irritated and complained to me that he was called in on overtime to process paper rolls and he pointed out to me that two other union members, Robert Redman and Rich Rossetti, were processing paper rolls during their normal shift. I told Kurt Farmer that if they were assigned by a supervisor it is okay for them to be processing paper rolls and that he would not be able to do anything about it but that he would have to talk to them to find out why they were processing paper rolls. I told him to go talk with Rossetti & Redman and find out the details. I watched from inside of the break-room as Farmer spoke to Redman and Rossetti. The conversation became somewhat animated but I did not go out there. I think that, generally, it is better to let people work out their differences without other people getting involved.

Shortly after the verbal confrontation between Farmer and Rossetti, Farmer came to me and told me that they were assigned to process paper rolls by Supervisor Jeff Dearborn. Farmer told me that he talked to Jeff Dearborn and he was cleared to go home. Shortly after I spoke to Farmer, I spoke to Rich Rossetti. He was blowing off steam about the whole situation that just happened. I told him that he (Rossetti) was assigned to process rolls by a supervisor so what he and Redman were doing was okay and no one was in the wrong. No one else was present on the two occasions when I spoke to Kurt Farmer about his issue where he was scheduled to work but the job was being done by others. I do not recall if anyone else was present with me in the break-room when I was in the cafeteria.<sup>16</sup>

A few days prior to Thanksgiving Day, I received a copy of the report that was prepared by UHY Advisors, the company that had recently conducted a fact finding investigation at Cascades. Kurt Farmer had been suspended prior to the release of this report and subsequently terminated from employment. The union has been conducting an investigation into that suspension and termination. Within the UHY report most of the names of the union members who were interviewed as part of that investigation were blocked out. I was able to figure out who the blocked names were based on information that was discussed and their names were not blocked out in other areas, but I chose not to talk to them to avoid problems. Rick Rossetti and Robert Redman's names were not blocked out in the section of the report that summarized the investigator's interview of them regarding the May 17, 2008 confrontation with Kurt Farmer.

After I read the UHY report and as part of the Union investigation, I wanted to talk to Rossetti relative to the portion of the report that summarizes the UHY interview of Redman and Rossetti regarding the May 17, 2008 confrontation with Farmer. I chose to speak with Rossetti instead because I think I have a pretty good relationship with him and further because the information in the UHY report was mostly about things Rossetti said to the UHY investigators. When I spoke to Rossetti I did not tell him that he should keep his mouth shut or anything similar to that. I did tell him that I believe that union members are supposed to look out for other union members.

I refuse to reveal anything else about my conversation with Rich Rossetti that day because it is part of the ongoing union investigation and it is confidential at this time. I don't think management has the right to interfere with our union investigation. A few days after Rich Rossetti was interviewed by UHY investigators about the May 17, 2008 incident, he came to me and told me about that interview, and what he said to the investigators about Farmer. As part of the union investigation into the suspension and termination of Kurt Farmer, I also spoke to at least one other union member that same day. I will not provide that other person's name at this time or the name of any other union member or members that I may have spoken to as it is part

<sup>16</sup> UHY investigators call this room a break-room, Abdou calls it the cafeteria. It is the same room regardless of what it is called.

of the ongoing union investigation and in fear of any retaliation by management.”

c. Harrelle’s participation in the Abdou investigation

5 Union President Harrelle testified about Abdou’s role in the grievance process. Grievances are usually filed by the shop stewards who handle the grievance through the first step. Abdou becomes involved at the second step and takes it to the third step, where the International Union representative becomes involved. He and Abdou then handle the third step with the advice of the Local Union’s Executive Board. Abdou has the authority at the third step  
10 to decide what to do, without consulting the Executive Board.

Harrelle learned of Abdou’s suspension from the Union’s Vice President, Rick Geer, about an hour after it happened. Harrelle testified that it was very unusual for an employee at Cascades to be suspended without that person being given a reason for the suspension. But  
15 that was the case with Abdou. Haddad called Harrelle later and set up a meeting with Abdou and the UHY investigators.

The meeting took place on December 15, and just prior to the meeting Haddad gave Abdou a letter stating he was suspended pending the completion of an investigation. Haddad  
20 offered no explanation to Abdou or Harrelle concerning the letter. The investigators, Luty and Rudewicz, then started the meeting saying that they had questions related to the May 17 incident. Harrelle spoke up and asked if the events of seven months ago were why Abdou was being suspended. One of the investigators replied no, and stated that they were just there to ask questions. Harrelle at some point asked the investigators why Abdou was being suspended.  
25 Rudewicz said they had no reason at that time and were doing an investigation. During the meeting, the investigators asked if Abdou had met with any other employee than Rossetti in the November timeframe. Abdou said yes, but stated he would not reveal that employee’s name. Abdou added that he was in the process of conducting a Union investigation which was his right and he would reveal the name at a later date. During the meeting, Abdou reminded the two  
30 investigators that during the September interrogation of him he had requested that their questions be in writing so he could check with the Union’s legal counsel before answering them. He also reminded them that they failed to reduce the questions to writing.

According to Harrelle, Abdou gave some details about the May 17, 2008 incident and  
35 Abdou noted that he learned of what happened after the fact from Kurt Farmer.

When the meeting ended, Harrelle was not sure that Abdou was in trouble with management. Harrelle and Abdou were told that the investigators would get back with them. Harrelle asked how long Abdou’s suspension would be and they said they were continuing the  
40 investigation and that Haddad would advise Harrelle how long the investigation would take and what the outcome would be. After the meeting, the investigators prepared a statement for Abdou to sign. The meeting where this statement was shown to Abdou was attended by the International Union Representative and Harrelle was not present. At the meeting on December 15, Harrelle objected that no reason for the suspension was being given and stated that it was a  
45 “witch” hunt going back to an incident occurring seven months prior to the December 17 meeting to find some reason to discipline Abdou. Parenthetically, I totally agree with this assessment.

On cross examination, Harrelle testified that insubordination involving the failure of  
50 employees to be truthful with management had been a part of the reason for terminating those

employees. He testified that he knew of no employee ever disciplined for violating Article 6 of the collective bargaining agreement.<sup>17</sup>

d. Haddad's participation in the Abdou investigation

Haddad testified that on or about December 12, she was concerned that Abdou had been insubordinate in the September interview he had with UHY investigators. She based this concern on the report of this interview contained in the investigation file of Kurt Farmer, which was turned over to the Union in late November. A reading of this report will show that no question of Abdou's credibility was raised in the report. The insubordination could have been Abdou's insistence that questions to him about the incident be put in writing before he would answer them. It could have been the variance between what the investigators reported that Abdou told them compared with the report of interviews with Rossetti and Redman. Of course, the investigators did not note Abdou's request for the questions to be put into writing in their report of the September 24 interview with Abdou. The question of the variance however would have been obvious from simply reading the September 24 memo and it is telling that management did not pursue this issue at the time it learned of it. That inaction says to me that it was indeed unimportant. The same would be true of Abdou's supposed failure to intervene in the Farmer – Rossetti confrontation. I believe and find that Respondent seized upon this possible variation between Abdou's reported statements to the investigators and his inaction simply to pile on reasons for his discipline.

Abdou was suspended on December 12 based on Rossetti's complaint. No one asked Abdou about his version of what happened until after he was suspended.

Haddad testified that mill rules apply to all employees, including management. One of the Mill rules Haddad thought Abdou may have violated was a prohibition against threatening or intimidating.

On December 16, the Union filed a charge with the Board about Abdou's suspension and Haddad received notice of the charge on December 17. On that day she prepared a handwritten sworn statement relating to the Abdou matter.<sup>18</sup> It reads:

"I am the interim H.R. Manager at Cascades Box Board Group in Versailles, CT. On 12/3/08, I received a telephone call at my office from an employee Rick Rossetti. <sup>19</sup>He wanted to inform me that Abdellatif El berchoui ('Abdou'), the Chief Steward of the Union had approached him at work a few days prior and that Abdou showed him portion of an investigative report. The portion of the report that Abdou showed him had to do with an incident that occurred at the plant on May 17, 2008 when he and employee Bob Redman were confronted by another employee Kurt Farmer. Rick Rossetti told me that Abdou asked him to read that portion of the

<sup>17</sup> Article 6 is the "no strike" provision of the agreement and is set out in more detail at a later point in this decision.

<sup>18</sup> Haddad testified that Luty wrote this statement which she signed. There is a dispute between Haddad, Luty and Rudewicz as to actually wrote the statement. I believe the best evidence is that Luty handwrote the statement. Regardless, I take it as her statement as she swore to its accuracy and signed it.

<sup>19</sup> As noted in the footnote above, this statement was prepared for Haddad by Jack Luty and is in his handwriting. I cannot tell from the handwriting whether she refers to Rossetti as "Rich" or "Rick". I have chosen to use "Rick" as that is consistent with the spelling of Rossetti's first name throughout the rest of the record.

report and tell him if it was true. Rossetti told me that he told Abdou that it was true and that he reminded Abdou that he told him back then that he had been interviewed by investigators and told him at that time what he told the investigators. Rossetti went on to tell me that after he told Abdou that the report was accurate as to what he said about the May 17, 2008 incident, Abdou told Rossetti "You should keep your mouth shut." Rossetti also told me that he told Abdou that Kurt Farmer was "out of control" during the May 17<sup>th</sup> incident and told Abdou, "you know it" and "you did nothing." Rick expressed concern to me that he didn't want this to go any further but that he wanted me to know that it happened. I told him that I could not promise him that it wouldn't go further.

I called Rick Rossetti back within an hour or two and asked him to come into my office to discuss this further. He said he could not come in at that time. While I was on the telephone with him, I read my notes back to him from what he told me in our previous conversation. He said that Abdou told him "You should keep your mouth shut." Rick was wondering how the union got a copy of the investigative report. I told him that the company had to provide it to them and I apologized for not fore-warning him. He was also wondering if Abdou approached any of the other employees who were interviewed in the investigation.

I made contact with other employees to let them know that the report had been given to the union and also asked them if they had been approached by the union to verify the portion of the report involving their interview. No one that I spoke to had been approached.<sup>20</sup>

On 12/10/08 during a second shift, I asked Rick Rossetti to come into my office while he was working. When Rick came to my office, I told him that I couldn't find anyone else that was approached by the union about the report. I told him that I thought it is significant that he is the only one approached by the union and that it seems that Abdou had singled him out because he is the only one who named Abdou in the report. Rick agreed.

I want to note that during the first conversation I had with Rick when he called me at my office on 12/3/08, he expressed concern about other employees being approached because he felt he was being 'strong armed' by Abdou. He was especially concerned about his co-worker Bob Redman.

I have read this statement. It is the truth.

I should also add that during the 12/10 meeting with Rick Rossetti, I informed him that we would probably pursue this matter further. He said, "do what you've got to do." Ghislain, the Mill Manager, who was present during the entire 12/10 meeting then asked Rick Rossetti if he would be willing to give a written statement about his conversation with Abdou. He said that he would provide a written statement."

Haddad testified that Abdou was suspended in December 12, in part for refusing to answer the investigators questions in September without them being put into writing.<sup>21</sup> With respect to the obvious contradictions between Abdou's denials of knowledge of the events of May 17 on September 24 and the interviews of Farmer, Rossetti and Redman, Larouche and Haddad took no action based on this information. I would note that following the interviews of Rossetti and Redman and Farmer, Larouche and Haddad both knew that, at least according to these three employees, Abdou was present for all or a part of the incident and did nothing to prevent it or stop it. It strikes me as strange that having that knowledge at least as of the end of

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<sup>20</sup> In her testimony, Haddad denied that she had asked the employees if they had been approached by the Union, thus denying the truthfulness of the statement in this regard. For reasons I have already given and which are set out in the portion of this decision relating my conclusions about the lawfulness of Haddad's actions in this regard, I credit the statement and not her denial.

<sup>21</sup> I would question the truthfulness of this statement by Haddad, as the UHY report of the September 24 interview does not mention this request by Abdou.



October and doing nothing; then to proceed to base a large part of the reason for suspending Abdou for that reason in December pending investigation, and then again in January after the investigation was complete. In response to a question as to why she did not do anything at the time, Haddad answered: "It wasn't necessary. Kurt Farmer in his affidavit, also said that he has maybe spoken to Abdou - - without reading it I can't be sure, but he has spoken to Abdou, didn't know what they had talked about. It didn't add anything or take away from the case." Evidently subordination by not telling the truth in the September 24 interview and a possible violation of Article 6 of the collective bargaining agreement by Abdou was not worth pursuing when it first came to light.

General Counsel noted at this point in the record that the UHY investigators do not call Abdou's credibility into question in their September 24 memo nor do they state in it that Abdou refused to answer their questions.

e. The Investigators Version of the Abdou Investigation.

Frank Rudewicz is currently employed by BDQ Seidman, LLP in its division called BDQ Consulting. His title is Managing Director and Practice Leader for the New England Forensic and Litigation Support Practice. He has been in that position since February 2009. Among other duties, he both conducts investigations and directs others in conducting investigations. Prior to February 2009 and at all times material to this proceeding, he was employed by UHY Advisors in a similar capacity. He testified that UHY has conducted independent investigations for Cascades on a number of occasions. He has also done surveillance of employees suspected of harassing other employees away from the mill. In one such surveillance and investigation involving an employee named Cunningham, he interviewed fifteen employees and determined that the harassment allegations were true and Cascades terminated Cunningham. The investigation started when an employee complained to Cascades that Cunningham had driven back and forth in front of the complainer house while his family was there.

Rudewicz testified that in a unionized environment, he has a prepared script used to initiate interviews. The interviewer tells the person being interviewed that he or she is conducting an independent fact finding about certain allegations about which the interviewee may or may not have information; that the interviewers report and findings are going to be based on the information that he receives; that he has reviewed the situation and knows that the interviewee has certain rights under the collective bargaining agreement; that the investigation is not meant to take away any rights that they have under the contract or otherwise; that they are entitled to union representation at the interview; that there may be questions that sound accusatory, but they are not meant to be, as the purpose of the questions is to get certain facts; that if the interviewee chooses not to answer a question, the interviewers report will be based on the information received and that this is their opportunity to present information. If the interviewee is represented by his or her union representative and that representative answers questions for the interviewee and the interviewee does not change that answer, the representative's answer will be accepted as that of the interviewee.

In October 2008, Rudewicz was contacted by Cascades and was requested to supply notes, interview reports and the final report related to the investigations of Kurt Farmer and Jason Allen. During his interviews, he makes notes which are then typed and the original notes destroyed. He supplied Cascades with the formal report from the investigations and the supporting typed information on October 27. This documentation is in the record as GC Ex. 7. It was supplied to the Union pursuant to its information request on November 24.

When the various interviews that make up the report were held, some of the employees

interviewed asked that their names not be disclosed to other employees out of fear of harassment. To honor these requests some interviews were held off site. The document given to the Union has the names of some individuals blacked out. None of the employees interviewed relative to the Farmer – Allen investigation who requested union representation during the interviews were denied representation.

On December 11, Rudewicz was called by Cascades to conduct another investigation. He was told by Haddad that Rick Rossetti had complained that Abdou had shown him a report which he had thought was confidential and that he felt Abdou had strong armed him. In his investigation he reviewed notes of Haddad with respect to her communication with Rossetti. According to Rudewicz, he would have interviewed Rossetti at this time, but Rossetti was on vacation. So he and his partner, Jack Luty, interviewed Abdou and Haddad first. These interviews took place on December 15 and 17 respectively. According to Rudewicz, Haddad related that Rossetti had called complaining that Abdou had come to him with a copy of the report and had questioned him about what the report attributed to him. According to Haddad, Rossetti was concerned that Abdou was going to talk to other employees named in the report. He was further concerned that other employees may consider him a “snitch.”

Rudewicz testified that in his opinion the interview of Abdou on September 24 became relevant during the December, 2008 – January 2009 investigation of Abdou because what they learned later from Abdou contradicted what he told Rudewicz in September. Rudewicz testified that Abdou was interviewed in September following earlier interviews with Farmer and Rossetti. Rudewicz testified that he told Abdou in his interview that both Rossetti and Farmer had told Rudewicz that Abdou had spoken with Farmer before and after the confrontation and that Abdou had watched at least part of the incident from the cafeteria. Rudewicz testified that Abdou on September 24 denied both of those statements. Again, I would note that they did not need the additional information to know that this conflict existed, as Rudewicz’s testimony reveals that they were aware of it following Abdou’s interview of September 24. As noted before, that obvious conflict was apparent in September and did not raise any red flags with either the investigators or management.

Rudewicz explained the process by which the final version of the statement of Abdou resulting from the December 15 interview was compiled. Rudewicz denied telling Abdou that there would be consequences, including termination, if he did not provide certain information. According to Rudewicz, he told Abdou and Harrelle on December 15 that he would be asking questions about the May 17 event and a complaint the Company had received of his November meeting with Rossetti. Rudewicz testified that he asked Abdou why if he were conducting an investigation he only asked questions about the only portion of the investigatory report that named Abdou.

Part of the affidavit that Abdou changed was a sentence reading “I did not approach Redman because he is a very quiet guy who keeps to himself and I didn’t want to make him nervous.” Abdou had that sentence crossed out and left out of the final version of the affidavit. Rudewicz testified that he crossed it out though Abdou had made that comment on December 15. According to Rudewicz, he thought not asking Redman, admittedly a somewhat nervous person, had some bearing on whether Abdou was conducting an investigation or just trying to intimidate Rossetti.<sup>22</sup>

<sup>22</sup> It is not truly important, but even Rossetti agreed that Redman was more vulnerable than himself because of an injury he had suffered which left him with some after effect. Rossetti was only concerned if Abdou questioned Redman and was relieved to find he had not. I credit

Continued

Luty testified that during the December 15 interview of Abdou by UHY, Abdou stated that he was present during the May 17 confrontation and that he had had that information when he was interviewed on September 24 but did not know if he was at liberty to tell UHY because of his position as a Union official. Luty did not deny that this occurred.

Luty, in regard to the striking out of the reference to "strong armed" in Rossetti's December 18 affidavit, testified that Rossetti hedged about having said that to Haddad. Rossetti told him at the time he did not say that to Haddad. Luty testified that he did not hear this term from Rossetti, rather he heard it from Haddad.

When the corrections to Abdou's December affidavit had been made and the final affidavit given to Abdou and his Union representative Carl Turner, they left saying they were going to show it to counsel before signing it. On December 22, Rudewicz received an email from Turner saying that Abdou would not sign the affidavit, that Abdou had supplied all information he had. Turner asked Rudewicz to let them know if he had any questions. By email dated January 4, 2009, Rudewicz wrote Turner stating: "We would like any additional information that Abdou thinks may be helpful in this inquiry, to include the names of the other employees besides Rossetti that he said he interviewed on or about November 30 as part of his investigation."

Turner replied with an email dated January 5, 2009, reading: "We have no other additional information that would be helpful in your inquiry at this time."

Rudewicz testified that during the December 15 interview, Abdou stated he was conducting an investigation on November 30 and spoke with at least one other person in addition to Rossetti. Rudewicz wanted the name of this person to confirm that Abdou did indeed speak to someone other than Rossetti as it would bear on whether Abdou was conducting an investigation or simply trying to intimidate Rossetti.

5. Further employee interviews are conducted in January 2009 Relative to the Investigation of Abdou.

Following the December interview with Abdou, UHY decided to conduct further interviews with employees to see if they could find another employee who Abdou approached with the investigative report. <sup>23</sup>The January 2009 employee interviews were conducted to develop evidence as to whether Abdou had actually interviewed someone other than Rossetti on November 30 as Abdou refused to name the person. Rudewicz asked Haddad to arrange interviews with all employees working on November 30 that were part of the same shift. Rudewicz and Luty together came up with the questions to be asked the employees. The two questions asked were:

Abdou's reason for not interviewing Redman on November 30 as being credible.

<sup>23</sup> Haddad testified that the purpose of UHY's interrogation of employees on January 2, 2009 was to determine if Abdou was telling the truth when he told them in December that he had approached another employee besides Rossetti about the investigatory report in November. Haddad puts the date of these interviews as January 2, 2009. Luty's handwritten notes of these interviews is dated January 5, 2009. Regardless of which date is correct, the interviews took place.

1. Did Abdou ever approach you and ask any questions about the suspension or termination of Kurt Farmer or Jason Allen?

2. Did Abdou ever come to you with a copy of a report that the union obtained from management regarding the investigation of Kurt Farmer and Jason Allen?

These questions were asked of employees Wayne Hewitt, Chris Morris, Chris Vasquez, Joe Schramm, Matt Mowray, Mark Varley, Bob Redman, Frank Santarcangelo, Robert Haggerman, David Martinez, Joe Zuccaro, Russ Lutz, Tom Clukey and Norman Harrell. Luty reported to Rudewicz that based on their answers Abdou did not approach any of these employees about the subjects named in the questions. Using this information, Rudewicz ruled out the possibility that Abdou was conducting an investigation and that his conversation with Rossetti on November 30 was for other reasons. It was noted on cross examination that Rudewicz did not include some people who were named in the investigatory report that Rossetti feared Abdou would be approaching with the report.

The January interviews were conducted by Luty on January 5, 2009. With respect to the interviews he conducted with employees in January 2009, Luty testified that he prefaced each interview with a statement to the employees that: "this is only going to take 15 or 20 seconds, there's two very simple direct questions, there is no discipline pending against you, this has nothing to do with you doing anything wrong and we just want to know if Abdou had any certain conversations with you, but we're not interested in what he said." Luty did not recall any of the employees interviewed asking for Union representation during the interviews.

With respect to the January interview of Chris Morris, Luty remembered that Morris answered both questions "no", but also stated he may have asked Abdou at some point what was going on with the case.

Morris testified briefly about his interviews. He testified that Luty asked Morris two questions that Morris did not remember at hearing and that was the extent of the interrogation. Abdou's name was not mentioned.

Frank Santarcangelo testified that in early January 2009, he was told by his supervisor to go meet with Haddad. He assumed he was in some sort of trouble. When he got to the Company office, Haddad introduced him to Jack Luty and then Haddad left. Luty asked if Abdou had shared with him some information about Kurt Farmer and Jason Allen. Luty did not show him any documents or for that matter anything in writing. Based on the questions he was asked, he believed the Company was going after Abdou for something. The whole interview lasted about two minutes. Although he is a Union steward, he did not ask for representation in the interview as he had run afoul of management in the past and did not want to make waves. He left the meeting feeling that it was not in any way connected to him, though he was not told by Luty that the questioning involved nothing that could result in discipline for him.

I would note that Luty did not have a witness at these interviews and neither Morris nor Santarcangelo testified as to any assurances by Luty before he asked them the two questions. Respondent in a position statement given to the Board in March 2009 relative to these interviews states at one point: "The Company maintains that the circumstances of the questioning did not give rise to circumstances which would warrant the *Johnnie's Poultry* assurances." At another point in the same document, Respondent asserts: "The Company concedes that Luty did not offer specific *Johnnie's Poultry* warnings to the employees who were

interviewed on or about January 5, 2009.”<sup>24</sup> Based on the foregoing, I find that Luty did not preface his questions with any sort of assurances and find his assertions that he did to be not credible.

5                   6. The results of the Investigation and the Discipline of Abdou

                  a. The Investigators’ Conclusions

10               GC Ex 12 is the final report of UHY to Cascades on the Abdou investigation. Rudewicz and Luty concluded that Abdou was not conducting an investigation and that his purpose on November 30 was meant to intimidate Rossetti. The conclusions of this report, dated January 6, are as follows:

15               “Based upon the information gathered during this inquiry as well as information gathered from past related inquiries involving Kurt Farmer and without additional information, we do not find that the explanation of Abdou as to why he confronted Rossetti on or about Nov 30<sup>th</sup>, 2008 as credible. We base this on the following:

20               We were informed by Abdou that he confronted Rossetti as part of a union investigation into the termination of Kurt Farmer. However, Abdou only questioned Rossetti about a portion of the report wherein Abdou was named.

25               Abdou stated that his role of Chief Steward mandates that he is made aware of all union investigations but that he is not required to personally conduct them. Other union officials are typically assigned to conduct inquiries at the direction of the Chief Steward. We find it suspect that Abdou would choose to conduct a portion of the investigation where he is named as a potential antagonist.

30               Abdou stated that he interviewed at least one other union member on the same day as he confronted Rossetti as part of the investigation into Farmer’s termination. Both Shannon Haddad and UHY conducted separate interviews of Cascades employees and did not identify one person who was interviewed by Abdou in conjunction with an investigation.

35               During Abdou’s confrontation of Rossetti, there was an implied tone of intimidation by Abdou. Rossetti claimed that Abdou told him to keep his mouth shut. Abdou denied those statements but admitted to telling Rossetti that “union members should look out for union members”. We find that based on current circumstances, this statement was meant to intimidate.

                  We did not find, nor were we told of any other actions taken by Abdou as part of an official investigation into Farmer’s termination.

                  Abdou refused to sign an affidavit as to the truth of his statements.

40               Alternatively, we find that the information provided by Richard Rossetti is credible. We base this on the following:

45               His account of events concerning the May 17<sup>th</sup> incident involving Kurt Farmer is consistent. Back in August when he was initially interviewed, he provided information that was identical and consistent to the information provided most recently.

                  We find that the timing of his complaint to Cascades management bolsters his credibility. It was done contemporaneously after he believed an attempt by Abdou to intimidate him on or about November 30<sup>th</sup>.

                  Rossetti provided, without hesitation, a sworn affidavit under oath as to the veracity of

50               <sup>24</sup> See JTX 4.

the statements.

Rossetti provided this statement against his own personal interests. He was informed that an investigation (misspelled in original) would be conducted based upon his complaint. Knowing that the information would be attributed to him and provided to the union, he still  
5 provided the information.”

In his testimony Rudewicz was asked some questions to illicit some information not contained in the UHY report and not shown to be made available to management before it inflicted discipline on Abdou. Such information is totally irrelevant and will not be discussed.  
10 Rudewicz was also asked whether the investigation was independent and of course, insisted it was. I believe the tone of the findings of UHY indicate otherwise and that the conclusion of the report was certain from the outset. The report does not just contain factual findings, but speculative conclusions which are at odds with the facts I find are credible in this proceeding.

On cross examination, it was pointed out that UHY based, in part, its findings on the premise that Abdou showed Rossetti only the three lines of the report that mentioned Abdou's name whereas the evidence reflects he showed him the whole page dealing with Redman and Rossetti's statements dealing with the May 17<sup>th</sup> incident.  
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I find it significant that the investigators did not even note that Abdou's December 15 interview conflicted with his denials of knowledge of the May 17 incident on September 24. Luty testified that the September 24 interview with Abdou was not a factor in their conclusions about Abdou in the January 2009 report.  
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b. Abdou is suspended for ninety days  
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On or about January 19, 2009, Abdou was summoned to the mill and met with Michael Poulin, Ghislain Levesque and another management member. Harrelle was also present. Levesque told Abdou he was suspended and gave him a letter dated January 19, 2009. This letter reads:  
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“We have concluded our investigation into suspected misconduct which led to your being placed on an investigatory suspension on December 15, 2008.

You were interviewed last fall concerning suspected misconduct by Kurt Farmer. Kurt Farmer was terminated for interfering with production by, among other things, intimidating or attempting to intimidate two employees assigned to perform an assignment during their regular shift on or about May 17, 2008. At that time, you would not answer questions posed by the investigators concerning your role as a witness to the May 17, 2008 incident – including the fact that you were seen talking with Farmer at the time of the incident – as you claimed you were acting in your capacity as a steward. Instead, you asked the investigators to provide you with written questions. The investigator did not, at that time, continue to question you as your statements were not necessary to establish Mr. Farmer's conduct. The investigative materials created during the investigation of Mr. Farmer's suspected misconduct, and which were used as the basis for his discharge, contained the statement that you were observed by Ricardo Rossetti watching Mr. Farmer intimidate and interfere with the work of Mr. Rossetti and another employee. The Local was provided a copy of the investigative report.<sup>25</sup>  
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On December 3, 2008, Ricardo Rossetti came to Shannon Haddad to complain that you approached him about the portion of the investigative report where your name was mentioned in connection with the May 17 incident. During that conversation, you told him words to the effect  
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<sup>25</sup> Rossetti's name is apparently misspelled in this letter.

of "You keep your mouth shut." You denied saying this. Mr. Rosetti came to Ms. Haddad and told her that he perceived that you were trying to strong arm him.

When interviewed as part of the investigation into the December incident, you admitted that you observed Farmer during the May 17 incident. You provided details of this, including that you "watched the verbal confrontation between Farmer and Rosetti. The conversation became somewhat animated but I did not go out there." Based upon UHY's investigation and conclusions regarding credibility, we do not find your explanation of the incidents of December 3 or May 17 incidents credible. We conclude that you confronted Mr. Rosetti on December 3 because he explained to the investigators that you observed the May 17, 2008 incident and did not intervene to stop it, and you were attempting to intimidate him for providing information to the Company.

Article 6 of the labor agreement contains an agreement by the union and the Company "that there will be no strikes, slowdowns, picketing, work stoppage, or *interference with the production or the operation of the business for any reason.*" (emphasis in original) Further, as a union official, you have an obligation pursuant to Article 6, Section 4 to "immediately take steps to end such . . . activity by instructing the employees involved that their conduct is in violation of the Agreement." You did not do this in connection with the May 17 incident. In fact, you attempted to intimidate Mr. Rosetti for bring this information to the Company's attention.

Cascades concludes that you engaged in the suspected misconduct leading to the investigation. Your conduct violates Article 6 of the collective bargaining agreement, including your obligation to end such conduct, as well as mill work rules prohibiting interference with production and intimidation of employees. Your failure to be truthful in the investigation constitutes insubordination. Your conduct is serious and warrants severe discipline.

Accordingly you are suspended for three months, effective beginning on December 15, 2008.<sup>26</sup> You will be notified as to when you may return during the week of March 17, 2009. Your conduct runs directly contrary to Cascades interests as well as the interests of your fellow employees, and cannot be tolerated. Further incidents of this nature will result in more severe discipline, up to and including termination from employment.

During the period of your suspension, you are not to come onto Cascades property for any reason, unless specifically authorized by Cascades."

Until this suspension, Abdou had not been disciplined by Cascades or its predecessor Caraustar save for a written warning by its predecessor owner, Caraustar, in 2003, for leaving an employee meeting because he disagreed with what was being said.

When Cascades assumed ownership of the Company in or about 2006, there was a change in management. Since the change in management, labor relations went downhill according to Abdou. The number of grievances and arbitrations increased and for the first time, a charge was filed with the NLRB. Abdou estimated that the Union had filed over a hundred grievances since Cascade acquired the Versailles facility. Of these, he estimated six or seven went to arbitration or are currently in the arbitration process. Some of the grievance were settled and some withdrawn or dropped.

#### c. Management's Testimony about the Reasons for Abdou's Suspension

With regard to the discipline inflicted on Abdou, Larouche testified that there had been no disciplinary cases identical to that of Abdou in the past. On the other hand, he testified that the disciplinary cases of Charles Zinewicz and David Santarcangelo used similar grounds for termination. Respondent introduced the report of an arbitrator who upheld the termination of

<sup>26</sup> Regardless what this letter says, Abdou was suspended on December 12.

Santarcangelo. The Zinewicz/Santarcangelo cases involved one or the other of the two men putting part of a partially eaten pizza in a completed roll of paper which was shipped to a customer. The customer complained and sent a picture of the pizza in the roll. An investigation turned up video of Santarcangelo acting curiously and in all likelihood, committing the deed and Zinewicz observing the act and laughing. The customer, after receiving the tainted roll switched its orders to another mill causing several weeks of downtime at the Versailles mill.

At the outset of the report concerning Santarcangelo, the Arbitrator cites as relevant contract provisions, Article 6, No Lockout – No Strike, Sections 2 and 5, Article 7 – Management Right and Miscellaneous, 6. Discipline. In the arbitrator's conclusion, however, the arbitrator states as the primary reason for upholding the termination Company rule number 16 – "Deliberately jeopardizing quality of production." Secondly, the arbitrator stated that the contract between the parties prohibits interference with production.

A separate arbitrator reached a similar conclusion with respect to the termination of Zinewicz. The contract provisions set out at the beginning of this report are the same as in the Santarcangelo case and additionally the items in the Company rules that can result in discharge, citing rule 11. Insubordination and Rule 16. Deliberately jeopardizing the quality of production. In her conclusions, this arbitrator, as did the arbitrator in the Santarcangelo case, relied primarily on Rule 16, then on Rule 11 as the arbitrator found that Zinewicz lying about his involvement in the matter to be insubordination.

It should be noted that the Zinewicz – Santarcangelo incident resulted in the loss of business from the affected customer exceeding \$20 million and the partial shutdown of the Versailles mill for a period of time because of that loss of business.

Haddad, Larouche and Levesque each testified at the hearing about the reasons behind Abdou's three month suspension. Despite attending none of the investigative interviews himself, Larouche wanted him terminated, because he had terminated other employees for interfering with production. The example of this treatment is set out above in the discussion of the arbitrators' reports on Santarcangelo and Zinewicz. In an effort to support a claim that it did not discriminate against Abdou, Larouche volunteered that Abdou "got the better treatment than, than anybody else." To this day, I cannot understand how the actions of Zinewicz and Santarcangelo, which cost the Company \$20 million in lost business, are in any way comparable to anything Abdou did. However, apparently they are in the mind of Larouche.

Larouche even noted that Farmer was terminated in a discussion of the appropriate discipline for Abdou, inferring I believe that Abdou's actions were somehow comparable to Farmer's. A review of the investigative report of Farmer's actions reflect a number of incidents of misdeeds, the May 17<sup>th</sup> incident being the mildest. I agree with the position of General Counsel that what Abdou did was not remotely comparable to the actions of Farmer, Zinewicz or Santarcangelo.

Respondent's key decision-makers offered different and shifting reasons for starting the disciplinary process. Larouche focused on the "slowdown" allegation and the "intimidation or strong arm" allegations. When Respondent's counsel asked him why it was significant in his mind for Respondent to commence an investigation in December following the November 30 incident that had been relayed to Haddad, Larouche provided this answer:

"Because just there, there is insubordination. The only thing that we asked (Abdou) to do on this, on September 24, is just mention the truth, the whole truth and just the truth. On the, on September 24, he says I didn't know about it. I saw nothing. I witnessed nothing and I learn



afterward.”

If in fact this was the trigger for starting the discipline of Abdou, it should have been pulled when Larouche and Haddad received the Farmer investigative report in October.

Whether Abdou had told the truth in the September 24 interview or not, taking the UHY report at face value, there was an obvious conflict between the role Abdou played in the May 17 incident as related by Rossetti and Redman and Abdou’s reported denial of any knowledge of the incident. I do not believe it was important to Respondent then and I do not think it is important now. A careful reading of the suspension letter prepared by Levesque reveals it does not make this assertion. The paragraph dealing with the September 24 interview notes only that Abdou would not answer questions about the incident without them being put in writing because of his position as a Union official. The part of the Levesque letter dealing with insubordination for lying comes much later and does not say what Abdou lied about.

Levesque displayed unfamiliarity with the facts of Abdou’s case. In my sense, he was led through the high or low points of the reasons Respondent could find to discipline Abdou. Levesque was only partially involved in the investigation of Abdou’s alleged misconduct in relation to Rossetti and was involved in the decision to discipline Abdou. Levesque testified that he heard that Abdou had gone to Rossetti and “told him to keep his mouth shut, that he shouldn’t give details to the company and so forth, so yes it was clearly intimidation.” Levesque testified that there has been a history of intimidation by some employees and had informed employees in a series of meeting in early 2008 that the Company would not tolerate intimidation and violence. He testified that Abdou was suspended for violating Article 6 of the collective bargaining agreement, for insubordination, and for intimidation. The violation of Article 6 was Abdou’s failure to intervene in the May 17 confrontation between Farmer and Rossetti. He testified that it is clear that a Union executive has the duty to stop such interferences with production.

Such a stance is evidently contrary to what Respondent expects from its own supervisors. Supervisor Jeff Dearborn witnessed an animated confrontation between two unit employees, Tom Marcoux and Bruce Fontaine on January 4, 2008, and later gave an affidavit on this subject and subsequent events. Paragraph 4 of that affidavit reads:

“On January 4, 2008, I happened to notice Tom Marcoux speaking with Bruce Fontaine in a very excitable manner, so I walked over to inquire what was going on. I learned that there has been an incident between Marcoux and Frank Cilley in the shipping area. I offered to assist, but they indicated that they wanted to work out the matter themselves at that time. I followed up with Cilley regarding this incident and he wouldn’t tell me what had happened.”

Nothing was said to Dearborn about his decision to stay out of the conflict. I would note that a supervisor has disciplinary power over employees and can require that they do as he or she says. Abdou, even as a Union official, has no such authority and is the same category as any other employee. At least for purposes of this case, Respondent seems to be putting Abdou and other Union officials in a quasi-supervisory position that in reality does not exist.

With regard to the insubordination issue, if you look at Larouche’s statements on this issue, I would note that I continue to find it hard to believe that dredging up a potential conflict with what Abdou said on September 24 and making it an important part of the decision to discipline can be considered seriously when this potential conflict did not warrant even cursory investigation when it came to light in the reports of UHY given to Cascades in October. If you take Levesque’s letter to be Respondent’s position on the insubordination, it is for Abdou lying about something not specified in the letter. Thus it is wholly unclear to me what Abdou did that

constitutes “insubordination”.

The “intimidation” and “strong arm” issue is likewise suspect. When asked to expound on the intimidation aspect of the case, Levesque claimed that, “Mr. Rossetti’s affidavit is very clear, very precise. He felt intimidated.” Levesque testified that he had read Rossetti’s affidavit in January 2009. This is strange as Levesque’s testimony is directly in conflict with Rossetti’s affidavit and is patently untrue. At item 13 of Rossetti’s affidavit, Rossetti states: “I have never felt intimidated by Kurt Farmer, Abdou or anyone else at the mill.” As noted earlier, Rossetti also had stricken from the affidavit any reference to being “strong armed.” Moreover, as can be seen from the evidence, it was Haddad, not Rossetti, who introduced the notion of “intimidation” into this matter, not Rossetti.

Larouche testified that Abdou had the right to speak with employees about he investigatory report. Thus, Abdou was within his rights when asking Rossetti about the report. Haddad knew that Abdou was within his rights approaching Rossetti with the report. She also knew that Rossetti was not intimidated by Abdou and that his stated reason for complaining on December 3 was Respondent’s failure to give him advance notice that the investigative report in which his interview is contained, was being given to the Union. Yet she immediately reported the incident to Larouche and started the ball rolling toward punishing Abdou. There is no evidence in this record that Abdou had ever intimidated or attempted to intimidate any co-worker or supervisor in the past. There was no evidence that any Union official had been found to have intimidated fellow employees in the past. There is clear evidence that Supervisor Mustin intimidated a Unit employee, and threatened the employee with violence. Yet Mustin was not suspended until an investigation was completed. According to Larouche, Mustin came to him and admitted his intimidation shortly after it occurred. Yet, even having this admission, Respondent did not immediately kick Mustin out of the mill. But Abdou was somehow different. He was not even asked about the incident before he was suspended.

I believe and find that Abdou was disciplined not for any of the reasons given nor any combination of those reasons, but simply was punished for being a Union leader and activist when Respondent felt it could get away with it. That in my mind is patent discrimination.

#### 7. Respondent Violated Section 8(a)(1) and (3) of the Act by Its Suspension of Abdou.

The Board held in *Wright Line*<sup>27</sup> that once the General Counsel makes a prima facie showing that protected conduct was a motivating factor in the employer’s action against an employee, the burden shifts to the employer to demonstrate that it would have taken the same action even in the absence of the protected conduct. The employer cannot carry this burden merely by showing that it also had a legitimate reason for the action, but must “persuade” that the action would have taken place absent the protected activity “by a preponderance of the evidence.” *Dentech Corp.*, 294 NLRB 924, 956 (1989). A violation may be found when the employer fails to satisfy its burden of persuasion. *Id.* The *Wright Line* inquiry is one of motivation, the state of mind of the employer’s decision maker. Illegal motive has been found supportable by a number of factors which make up the General Counsel’s prima facie case, such as employer knowledge of the employee’s union activity, timing of the union activity in relation to the adverse action, and anti-union animus. Clearly the Respondent in this case was

<sup>27</sup> *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), enf’d 662 F.2d 899 (1<sup>st</sup> Cir. 1980), cert. denied 455 U.S. 988 (1982), approved in *Transportation Mgt.*, 462 U. S. 393 (1983).

shown to have knowledge of Abdou's position as a Union official, of his engaging in Union and protected concerted activities, and Respondent was shown to harbor Union animus. Once the prima facie showing is made, the employer may rebut the prima facie case by persuading that it would still have disciplined the employee even absent his union activity. If the Board rejects the employer's reasons as pretextual, a violation of the Act may be found. Thus a finding that the employer's given reason or reasons for the discipline are pretextual leaves intact the discriminatory motive established by the General Counsel.

Illegal motive has been held supportable by a number of factors other than employer knowledge, animus and timing, such as disparity of treatment, evidence indicating that the employee engaged in no misconduct, the failure to adequately investigate the circumstances surrounding the discipline, the failure to allow the employee to explain the accusations against him, and where the employer offers shifting and contradictory reasons for the discipline. All of these factors are present in the instant case.

It is also well settled that discipline for certain reasons can independently violate Section 8(a)(1) of the Act. In *NLRB v. Burnup and Sims*, 379 U.S. 21, 23 (1964), the Supreme Court held:

"In sum, Section 8(a)(1) is violated if it is shown that the discharged employee was at the time engaged in a protected activity, that the employer knew it was such, that the basis of the discharge was an alleged act of misconduct in the course of that activity, and that the employee was not, in fact, guilty of that misconduct."

The Act prohibits discriminatory discipline of an employee for engaging in protected activity. The General Counsel's position is that El berchoui (Abdou) was suspended for the act of investigating a grievance, clearly a protected act given his position as Chief Steward for the Union. His position I believe is well taken. Larouche admitted in his testimony that as Chief Steward, Abdou had the right to speak to employees concerning the Farmer report. UHY was well aware of Abdou's stated reason for speaking to Rossetti on November 30. The additional reasons given for Abdou's suspension, as I have heretofore noted, seem to be spurious and used only to attempt to legitimize the actions taken. Even Larouche admitted that absent the November 30 incident Respondent probably would not have pursued any investigation of Abdou. General Counsel contends and I find that on November 30, Abdou's conversation with Rossetti was a protected act, and was the triggering event that combined with Respondent's union animus caused the suspension. As Abdou was engaging in protected activity, disciplining him for that activity violates Section 8(a)(1) of the Act. See *Grand Rapids Die Casting*, 279 NLRB 662 (1986) (discipline for her own and a fellow employee's grievance in employee's union steward capacity violated the Act).

Given the strong evidence of Abdou's Union activity, Respondent's anti-union animus (demonstrated by the t-shirts ban, Poulin's threat of termination, and by the additional interrogations committed in order to build the case against Abdou), the shifting reasons given for Abdou's discipline, and the documented instances evincing disparate treatment contained in the record, General Counsel presented a strong prima facie case of unlawful discrimination within the meaning of the Act. The burden then shifted to Respondent to persuade by a preponderance of the evidence that it would have taken the same action absent Abdou's protected activities. Respondent utterly failed to meet this burden.

Looking at the triggering and primary reason given by Respondent for disciplining Abdou, that is the November 30 encounter with Rossetti, it is clear that Respondent jumped on this encounter even though Rossetti himself told everyone at every stage of the investigation

that followed that he did not feel intimidated by Abdou or what Abdou said in this incident. I credit Abdou that he did not tell Rossetti to keep his mouth shut and believe Abdou when he told him that union members look out for other union members. I find nothing inherently coercive about this remark and certainly nothing coercive about it when unaccompanied by some  
 5 express or implied threat of adverse consequences. There was no threat made by Abdou and Rossetti did not say he felt threatened. Clearly it did not deter him from continuing to speak with management as he called Haddad shortly after the incident and reported it, even trying to make Abdou look bad. Respondent continuously used the words strong arm to describe the incident though the person supposedly being strong armed backed away from that term. Anyone who  
 10 saw and heard Rossetti testify in this proceeding would know that it would be absurd to believe that he is capable of being intimidated by Abdou. Haddad testified that she knew Rossetti before the November 30 incident and I believe she knew he could not be intimidated by Abdou.

Simply, there was no intimidation involved in the meeting between Abdou and Rossetti.  
 15 Abdou was engaged in an investigation, slight as it might be, with admitted authority to do so. It was clearly protected and part of his authorized Union duties. There was no rational reason to pounce on this incident, but that is what Respondent did. It thereafter searched high and low for additional reasons to support punishment coming up with the ones I have discussed and dismissed earlier in this decision. I believe that the Respondent seized on Abdou's non-coercive  
 20 five minute conversation with Rossetti as an excuse, or pretext, to find a reason to justify harsh discipline. I believe and find that all the other reasons given by Respondent for this discipline are similarly pretextual and without merit.

Based upon all of the above, Respondent has failed to rebut the General Counsel's  
 25 prima facie case. Respondent offered various reasons for suspending Abdou, yet, as shown above, none of them withstand scrutiny. The Board has long observed that relevant in determining motivation is an employer's "use of a multiplicity of alleged reasons for disciplinary action." *Master Security Services*, 270 NLRB 543, 552 (1984). As the Board noted in *Master Security Services*, supra, the "introduction of minor unsubstantiated matters that would not  
 30 warrant discipline standing alone is further indicator of unlawful motive." See also, *New Haven Register*, 346 NLRB 1131, 1145 (2006). The Board has also noted, "[w]here an employer's stated motive for discharging an employee is false, the inference is justified that the employer desires to conceal the true motive and that the true motive is unlawful, at least where, as here, the surrounding facts tend to reinforce the inference." *Triple H. Electric Co.*, 323 NLRB 549, n.  
 35 2 (1997). Here, the surrounding facts and circumstances more than adequately reinforce the inference of unlawful motive.

Respondent's conduct throughout this entire case displayed a remarkable disregard for its employees' statutory rights. From the t-shirt ban and accompanying threats of termination in  
 40 July 2008 to the suspension of its Chief Steward prior to hearing without first hearing his version of events, to the disparate treatment afforded Supervisors Mustin and Dearborn, to the coercive questioning of employees with the purpose of attempting to build a case against Abdou, to the trumped up reasons for the suspension – Respondent has displayed a high level of hypocrisy. It claims that violence permeates the plant, and then bans a t-shirt decrying violence. It stalls in  
 45 giving the Union the Farmer investigative report, then seizes on the overly sensitive reaction of Rossetti, whose complaint was manipulated by Haddad, to justify harsh discipline of an employee with an unblemished record. Respondent claims to be concerned with the rights of employees to be free from harassment and intimidation, yet calls employees in for investigatory interviews by a seasoned private investigator, fails to give assurances against reprisals, and  
 50 distorts the evidence it receives from these interrogations to suit their needs.

Respondent has failed to meet its *Wright Line* burden of persuasion. It failed to show

that Abdou engaged in misconduct or that Respondent possessed a good faith belief that he had. *Doctor's Hospital of Staten Island, Inc.*, 325 NLRB 730 (1988). Respondent's reasons for the harsh discipline do not withstand scrutiny. Based on all of the above, Respondent cannot sustain its heavy burden of persuasion in this case. Accordingly, I find that Abdou's suspension violated Section 8(a)(1) and (3) of the Act.

D. Respondent Unlawfully interrogated employees on two occasions.

1. Haddad's Questioning Of Employees on December 3 Violated Section 8(a)(1) of the Act.

Haddad denied questioning employees on December 3, but the weight of the evidence suggests otherwise. First, Haddad contemporaneous statement that she "asked employees if they had been approached by the union to verify the portion of the report involving their interview."<sup>28</sup> Second, her self-serving denial that she asked employees any questions if further belied by the UHY report on Abdou's investigation that: "Both Shannon Haddad and UHY conducted separate interviews of Cascades employees and did not identify one person who was interviewed by Abdou in conjunction with an investigation."<sup>29</sup>

Haddad's testimony revealed that her heaviest involvement occurred early on, on December 3. Based on the documentary evidence which contradicts her testimony, I find that she interrogated employees on that date when she called them and asked them questions about protected conduct. While arguably not a *Johnnie's Poultry*<sup>30</sup> violation (the ULP charge regarding Abdou had yet to be filed), Haddad's questioning of employees on December 3, 2008 was coercive under the Board's long held standard: Did the questioning have the tendency to coerce an employee in the exercise of Section 7 rights? On the facts presented and the weight of the credible evidence, I find Haddad's questioning was clearly prompted by Rossetti's subjective overreaction to the fact that the Union had been given a copy of the UHY report. In view of the fact that the questioning was prompted by Abdou's activity as a steward and involved asking questions of employees that would reveal that activity, the questioning amounted to an unwarranted infringement on protected activity in violation of Section 8(a)(1). See *Cook Paint & Varnish*, 258 NLRB 1230, 1231 (1979). See also, *Consolidated Diesel Co.*, 332 NLRB 1019 (2000), in which the Board noted that it "has long held that legitimate management concerns to prevent harassment do not justify policies that discourage the free exercise of Section 7 rights by subjecting employees to discipline on the basis of subjective reactions of others to their protected activity."

2. Luty, as an Agent of Respondent, Violated Section 8(a)(1) by His Interrogation of Employees on January 5, 2009.

The charge in 34-CA-12219 had been filed at the time of these interviews. While the interviews were admittedly brief, they were clearly conducted to defend the charge and thus buttress a decision to suspend that had been reached weeks earlier. The evidence in the record strongly suggests that Respondent was likely deciding how harsh the discipline would be. Luty and Rudewicz were clearly acting as an agent for the Respondent. Respondent hired Luty and Rudewicz to conduct investigations into alleged employee misconduct. Respondent, by Haddad, facilitated the questioning of all employee interviews in Abdou's case. In this regard, Haddad

<sup>28</sup> See GC Ex. 11, page 2.

<sup>29</sup> See GC Ex. 13, page four.

<sup>30</sup> 146 NLRB 1176 (1984).

provided Luty with a shift schedule for his January 2009 visit listing the employees to be interviewed. In addition, Haddad met with employees before turning them over to Luty. After the interviews were completed, Luty reported his results to the Respondent. The Respondent relied on this report almost exclusively. Given these facts, as well as the ones in the record, I find that

5 Luty and Rudewicz acted as agents of the Respondent within the meaning of Section 2(13) of the Act. See e.g. *Alliance Rubber Co.*, 286 NLRB 645 (1987)(Board found two polygraph examiners hired for the limited purpose of conducting polygraphs of employees were agents of the employer and were acting within the scope of the actual authority when they questioned employees about their union activity).

10 First, the circumstances of Luty's questioning were coercive. Employees were told by supervisors simply to go up front; they were not told why and there was no choice. Haddad, a Human Resources representative, introduced the employees to Luty, an outside investigator whose previous investigations had resulted in an employee's termination, and the interviews

15 were conducted in a front office.

20 Second, Luty failed to inform employees that the interview was voluntary and that no reprisals would result, and thus failed to provide assurances pursuant to *Johnnie's Poultry*, supra. Nor could it reasonably be found, based on the two questions he asked, that he adequately apprised the employees of the purpose of his questions. Even assuming that he simply asked them the two questions, those two questions concern Abdou's protected concerted activities as a union steward investigating grievances. The questioning about such a matter is inherently coercive, unless proper and adequate assurances are given, and the questioning is for a legitimate purpose.

25 In a position paper given to the Board relative to this case, Respondent stated that: Luty's "questions were intended to clarify the Company's belief that Abdou singled out Rossetti for information, a plainly legitimate purpose."<sup>31</sup> Clearly the questioning was to support Respondent's belief that Abdou was guilty (hardly a legitimate purpose), not to get at the truth. As I noted earlier, Union President Harrelle correctly dubbed Respondent's treatment of Abdou

30 as a "witch hunt."

Respondent had no valid reason to go after Abdou in this manner. If someone had actually been coerced or intimidated, one would assume they would have come forward to

35 complain. Respondent refused to take Abdou at his word that he had not singled out Rossetti. Some of Respondent's conduct might be understandable if there was any real evidence that Abdou was out to "gag" witnesses. But there is no such evidence.

40 As I noted with Respect to the UHY final report of its investigation of Abdou, UHY's role in this investigation is suspect as it appears from its tone and the findings that the purpose of the investigation was not to simply find fact, but instead it appears to have been geared to convict Abdou of anything the investigators could hang on him. I believe that Luty's questioning of employees on January 5, 2009, assisted by Respondent, crossed the line and was coercive, as the questioning clearly pried into Section 7 protected activity: the right to speak to a steward

45 freely without fear that your conversation will be asked about later by management.

Based upon the foregoing, I find that Luty's January 5, 2009 interviews independently violated Section 8(a)(1) of the Act. See. e.g. *Cook Paint and Varnish Co.*, supra (under certain circumstances, given scope of questioning, violation to inquire into employees' dealings with

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<sup>31</sup> JTX 4, page 6.

union steward, thus prying into protected activities). They also violate the *Johnnie's Poultry* standard, as an unfair labor practice charge had been filed at the time they occurred, and the hearing in the t-shirts case was then pending. The Board applies this rule strictly. See *Midwest Television*, 349 NLRB 373, 387-388 (2007). As the judge noted in that case, the Board has  
 5 "established this requirement to ensure that employer's legitimate interest in obtaining relevant evidence will not encroach on employees' right to protection under Section 7." *Id.*, citing *Freeman Decorating*, 336 NLRB 1 (2001).

## 10 CONCLUSIONS OF LAW

1. Respondent Cascades Boxboard Group-Connecticut, LLC is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

15 2. United Steelworkers of America, Local 1840 and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union-USW are labor organizations within the meaning of Section 2(5) of the Act.

20 3. By, since on or about July 11, 2008, prohibiting employees from wearing at work T-shirts that communicate an anti-violence message and protest their working conditions, Respondent has violated Section 8(a)(1) of the Act.

25 4. By, since on or about July 11, 2008, unilaterally prohibiting the no-violence T-shirts without affording the Union notice and the opportunity to bargain over the decision to prohibit the wearing of the T-shirts, Respondent has violated Section 8(a)(1) and (5) of the Act.

30 5. By Assistant Mill Manager Michel Poulin, on or about July 11, 2008, threatening employees with termination if they did not remove the no-violence T-shirts, Respondent has violated Section 8(a)(1) and (3) of the Act.

6. By Human Resources Manager Shannon Haddad, on or about December 3, 2008, interrogating employees regarding their union activities, Respondent has violated Section 8(a)(1) of the Act.

35 7. By UHY Advisor's investigator, Jack Luty, at Respondent's facility on or about January 5, 2009, interrogating employees regarding their union activities, Respondent has violated Section 8(a)(1) of the Act.

40 8. By on or about December 12, 2008 and again on or about January 6, 2009, suspending its employee and the Union's Chief Steward Abdellatif El berchoui (Abdou), Respondent has violated Section 8(a)(1) and (3) of the Act.

45 9. The unfair labor practices committed by Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

## Remedy

50 Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily suspended its employee Abdellatif El

berchoui (Abdou), it must make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>32</sup>

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The Respondent should be ordered to remove from its files any reference to the unlawful suspension of Abdellatif El berchoui (Abdou) and thereafter notify him in writing that this has been done and that the suspension will not be used against him in any way.

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The Respondent should be ordered to rescind its unilateral ban on the wearing of the no-violence T-shirts and upon request, bargain with the Union in good faith concerning the issue of the T-shirts.

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The Respondent should also be ordered to post an appropriate notice to employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>33</sup>

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### ORDER

The Respondent, Cascades Boxboard Group-Connecticut, LLC, Versailles, Connecticut, its officers, agents, successors, and assigns, shall

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#### 1. Cease and desist from:

a. unilaterally prohibiting employees from wearing at work T-shirts that communicate an anti-violence message and protest their working conditions;

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b. unilaterally implementing the prohibition concerning the no-violence T-shirts without affording the Union the opportunity to bargain in good faith over the decision to prohibit the T-shirts;

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c. threatening employees with discharge if they refuse to remove the no-violence T-shirts;

d. by management and its hired investigators and agents, coercively and unlawfully interrogating employees regarding their union activities.

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e. unlawfully discriminating against its employees, including suspending them, for engaging in union and concerted protected activities.

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<sup>32</sup> General Counsel on brief would have me adopt another method of computing interest than the one presently used by the Board. I believe this to be a policy issue best left to the Board's discretion. Counsel for General Counsel can make his argument to the Board on exceptions.

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<sup>33</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.



f. in any like or related manner, interfering with, restraining or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action deem necessary to effectuate the policies of the Act:

a. Make Abdellatif El berchoui (Abdou) whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

b. Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful suspension of Abdellatif El berchoui (Abdou), and within 3 days thereafter notify the employee in writing that this has been done and that the suspension will not be used against him in any way.

c. Within 14 days from the date of the Board's Order, rescind its unilateral ban on the wearing of the no-violence T-shirts and upon request, bargain with the Union in good faith concerning the issue of the T-shirts.

d. Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

e. Within 14 days after service by the Region, post at its facility in Versailles, Connecticut, copies of the attached notice marked "Appendix."<sup>34</sup> Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 11, 2008.

f. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 8, 2010

\_\_\_\_\_  
Wallace H. Nations  
Administrative Law Judge

<sup>34</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities

WE WILL NOT unilaterally, and without affording the Union an opportunity to bargain in good faith, prohibit employees from wearing at work T-shirts that communicate an anti-violence message and protest their working conditions.

WE WILL NOT threaten employees with discharge if they refuse to remove the no-violence T-shirts.

WE WILL NOT by our own management or by our hired investigators, coercively interrogate our employees regarding their union activities.

WE WILL NOT discriminate against our employees, including suspending them, for engaging in union and concerted protected activities.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of rights guaranteed by Section 7 of the Act.

WE WILL make Abdellatif El berchoui (Abdou) whole for any loss of earnings and other benefits suffered as a result of our unlawful suspension of him, with interest.

WE WILL remove from our files any reference to the unlawful suspension of Abdellatif El berchoui and notify him in writing that this has been done and that the suspension will not be used against him in any way.

WE WILL rescind our unilateral prohibition against the wearing of the no-violence T-shirts and upon request of the Union, bargain with the Union in good faith concerning the issue of the no-violence T-shirts.

CASCADES BOXBOARD GROUP –  
CONNECTICUT, LLC

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlrb.gov](http://www.nlrb.gov).

280 Trumbull Street, 21st Floor  
Hartford, Connecticut 06103-3503  
Hours: 8:30 a.m. to 5 p.m.  
860-240-3522.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 860-240-3528.